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FEDERAL GASOLINE ALLOCATION PROCESS

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY REGULATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON THE

ASPECTS OF THE FEDERAL GASOLINE ALLOCATION PROCESS

JUNE 9, 1980

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FEDERAL GASOLINE ALLOCATION PROCESS

MONDAY, JUNE 9, 1980

U.S. SENATE,
SUBCOMMITTEE ON ENERGY REGULATION,
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 3110, Dirksen Office Building, Hon. Dale Bumpers, presiding.

Present: Senators Bumpers, Metzenbaum, McClure, and Domenici.

Also present: James T. Bruce, counsel.

OPENING STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BUMPERS. The subcommittee will come to order.

I requested that this hearing this morning be held on the Federal gasoline allocation process because of the many indications that something is wrong with the current system that determines how much gasoline each retail service station is permitted to sell.

The entire gasoline allocation system has recently come into considerable criticism. The GAO issued a report in mid-April entitled, Gasoline Allocation: A Chaotic Program in Need of Overhaul. And I'm sure other Members of Congress have received the same types of letters as I have from dealers, jobbers, and even refiners who are disturbed with the current gasoline allocation scheme, although for different reasons.

On September 30, 1981, the authority for gasoline allocation by the Federal Government expires, but I think most everyone, including many oil companies, recognize that we will continue to need at least a standby gasoline allocation program. It is important that whatever allocation system is used will work effectively and fairly and now is the time to develop a workable allocation system.

Today we want to focus on the aspects of the allocation system that affect the very existence of the roughly 150,000 independent gasoline dealers, that is, the ability of these dealers to obtain gasoline to sell. In particular, we want to focus on why existing dealers seem to be receiving far less gasoline allocation than new stations.

The issues are, one, how are allocations established for new dealers and how does the magnitude of these allocations compare to that for existing dealers?

Two, what happens to the allocations of stations that have closed?

Three, why are dealers receiving less than their full base period allocation, if supplies of gasoline are generally plentiful?

Four, what types of rulemaking is DOE contemplating on this subject in the immediate future?

Five, and then generally, what problems are the current regulations creating for dealers, jobbers, refiners, and the public?

I am happy to have Senator Metzenbaum with me this morning, Senator Metzenbaum, do you have a statement?

Senator METZENBAUM. Very briefly.

STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. I would like to subscribe to the same concerns with respect to the issues as you have stated them but with one additional and that is I am concerned as to whether the allocation system is causing artificially high prices to be maintained in the marketplace when there is a surplus of supply.

We are normally aware of the fact that if there is too much of a product, whether it's beets, corn, or anything else you might think about, prices come down. But in this instance, there is an oversupply of gasoline available in the country and prices have not only maintaining at the same high levels, but there is some talk, there is some movement upward and I am certainly talking about those prices not having to do with such actions as OPEC may be taking.

I hope I can learn something about whether or not it is the allocation system that is having this kind of impact. I would hope in the not too far distant future of hearings along to inquire further into that subject, possibly in the Antitrust Committee. Thank you, Mr. Chairman.

Senator BUMPERS. Thank you, Senator Metzenbaum.

Our first witness this morning is Congressman Gingrich.

Very pleased to have you with us.

STATEMENT OF HON. NEWT GINGRICH, A U.S. REPRESENTATIVE FROM THE STATE OF GEORGIA

Mr. GINGRICH. Thank you, Senator, for allowing me this opportunity to come over and share my views with the other body. I want to commend you for holding these hearings and I think this is a very, very important problem and one where we see a lot of light shed on the difficulties of small business, large business, and the Federal bureaucracy.

I want to commend both of you for your statements this morning because I think you have focused on issues which are central to this problem. I have a formal statement which I will submit to the record, which we have already submitted.

Let me just summarize by saying that I represent a congressional district in Georgia which is very diverse, from the central city to the very rural areas with suburbs as the dominant factor. I see gas stations and independent dealers at all levels.

This problem in some ways has been most heartrending of any I've dealt with in my first term because, when a small businessman comes to you who wants to work for a living, who spent 20 or 30 years putting his family's life into a business that has offered a decent living and he tells you or she tells you the problems they have and you go to the Federal bureaucracy, the Department of Energy, and you talk with them off the record, they agree about

the problems, and yet the allocation system as it is set up is designed to guarantee that if you are already in business and established, you are not going to get any help and if you have the capital to set up a new business, you will be able in the long run to crowd out the very people who theoretically the system was designed to help and protect.

I wanted to come by and speak briefly for the many businessmen and businesswomen I have heard from who, in one particular case which is on I-20 in my district, a man who—I want to read this one portion of my testimony, case history.

A young man with a wife and two children who in his own words believed in the American dream of owning his own business and this is a man I talked with at some length. He opened a service station, invested his life savings and all he could borrow—then through working long, hard hours, built his business up.

He stayed open early and late on weekdays and was open on weekends. He built the business up far past the 17,000 gallons his predecessor averaged. This was just before the regulations went into effect. The 17,000 gallons was used as his base period supply.

Most months he was reduced to about 83 percent of that. He had to cut down on his weekday hours and close on weekends to make his meager allocation last through the month. He accepted it. He was told there was a gasoline shortage. Then, all around him new stations were built.

These new stations were getting allocations of as much as 150,000 gallons a month. Since there no longer seemed to be a shortage, he asked for his allocation to be increased. He was told he had no grounds for requesting an increase. He has lost many of his customers to the new stations because they have enough gasoline to stay open 24 hours a day, 7 days a week. The oil company threatens to close out his tires, batteries, and accessories business. The oil company threatens to raise his rent.

Mr. Chairman, this same story is repeated over and over in my district so I just wanted to come at a human level and say that I see people faced with the collapse of their life's work because of their own Government and who are caught in a sense between the large oil companies and the large bureaucracy and I wanted to commend you and introduce my testimony for the record and encourage you to take a strong position in leading some effort to get the Department of Energy to rethink the whole process that it will be using for allocation.

[The prepared statement of Mr. Gingrich follows:]

STATEMENT OF HON. NEWT GINGRICH, A U.S. REPRESENTATIVE FROM THE STATE OF GEORGIA

Mr. Chairman, I'm here to speak for the existing small dealer—the independent service station operator.

I don't have facts and figures—no statistics. What I can testify to are letters and phone calls every day for several months—from small business people whose very livelihood is threatened by the existing regulations. Their pleas are not for special treatment, but for fairness.

They ask me "How can I stay in business getting 83 percent of my base period supply, around 17,000 gallons, when just down the road a new station has gone up—its allocation is 100,000 a month".

Many of these dealers have lost service contracts, because their customers are not sure they'll have enough gasoline to meet their needs.

Many have had to let employees go, because without enough gasoline to bring people in, they have no customers for their other products and services.

Mr. Chairman, may I give you a case history. A young man with a wife and two children, who, in his own words, believed in the American Dream of owning his own business. He opened a service station, invested his life savings and all he could borrow—then through working long, hard hours, built his business up. He stayed open early and late on weekdays nd was open on weekends. He built the business up far past the 17,000 gallons his predecessor averaged. This was just before the regulations went into effect. The 17,000 gallons was used as his base period supply. Most months he was reduced to about 83 percent of that. He had to cut down on his weekday hours, and close on weekends to make his meager allocation last through the month. He accepted it. He was told there was a gasoline shortage. Then, all around him, new stations were built. These new stations were getting allocations of as much as 150,000 gallons a month. Since there no longer seemed to be a shortage, he asked for his allocation to be increased. He was told he had no grounds for requesting an increased. He has lost many of his customers to the new stations, because they have enough gasoline to stay open 24 hours a day, 7 days a week. The oil company threatens to close out his tires, batteries, and accessories business. The oil company threatens to raise his rent.

Mr. Chairman, this same story is repeated over and over in my district.

In one rural area, all the stations are closed but one. The remaining station's allocation is so small, he cannot possibly serve the people of the area. In this rural area, with no public transportaion, his customers need gasoline to get to work. When the other stations closed, no part of their allocation was passed along to the remaining station.

One man who has been a dealer for the same oil company for over 20 years, has had his allocation cut to a fraction of his base period supply. Yet, across the road this same oil company has opened a new station with many times the allocation of the existing dealer.

This is also a common occurrence in my district.

Now, if there were a true gasoline shortage, these dealers would not be coming to me. But, at the same time they're being cut, all around them new stations are going up with as much as ten times the allocation the existing dealer has.

Mr. Chairman, many of these dealers tell me thay can get all the gasoline they want if they're willing to circumvent the law and pay the price the jobbers ask. The wholesale price for this "black market" gasoline is more than the dealer can retail it for. Nevertheless, some dealers buy it. They buy it because they want to keep their stations open—to keep from going under. May I quote from an article from the March 26 edition of the Atlanta Constitution: "Even the officials at DOE's regional office in Atlanta admit that the regulations they enforce are unfair and are forcing hundreds of independent service station operators into bankruptcy."

These independent dealers are just that—independent. They're not asking for a handout from their government. They're just asking that their government quit hurting them.

Mr. Chairman, in light of the many letters and phone calls I've received, and this article from the Atlanta Constitution which so accurately depicts the plight of the independent service station operator in Georgia; it is my hope that out of these hearings will come a basis for a more equitable allocation process.

Thank you.

[From the Atlanta Constitution, Mar. 26, 1980]

Gas Pains—Independent Service Station Owners Struggle for Life as Red Tape Tightens Around Pumps

(By Steve Johnson)

Government regulations have forced Steve Taylor to shut down his service station—in order to save it

While others all round him are swimming in gasoline, Taylor (not his real name) is caught in a Catch-22 of conflicting federal regulations which prevented him from getting enough fuel to sell to stay in business.

Had he been the operator of a new station, he could have gotten all the gasoline he needed. Had he run a "private brands" station such as a Jim Wallace or Buddy's he could have gotten more gasoline. And should he reopen a station after it has been closed for six months, he will be able to get more gasoline.

But Taylor had operated his major-brand service station at a busy intersection near Atlanta for seven years, so he could not get more gasoline.

He filed an appeal with officials of the U.S. Department of Energy, but they said there was nothing they could do to help. So on February 1, Taylor closed the doors of his station.

In six months long after his former customers have switched their loyalties elsewhere—he can reopen as a "new" station, eligible for all the gasoline he needs. That is, provided he doesn't tell anyone he has broken the law by closing down intentionally.

"I knew when I got into (the gasoline) business that it required hard work and long hours." Taylor said in a recent interview "But for me it was the American dream of owning your own business. Now I'm caught in the most asinine situation I have ever heard of.

Across Georgia and the nation, hundreds of independent service station operators who have spent years patiently building up their businesses are cutting back on hours, laying off employees and even raising their prices to the legal limit in an attempt to stretch a meager ration of gasoline throughout each month. Others are turning to the black market, a shady network of dealers willing to deliver a tanker-load of gasoline in th early morning hours—if the price is right.

Still others, like Steve Taylor, are calling it quits, boarding up their doors and finding other jobs for the requisite six months until they can reopen as a new station. Many never make it back.

According to the U.S. Department of Commerce, some 6,800 service stations will close in 1980 alone, with many of them going under because they have been unable to fight their way through a regulatory maze ironically designed to protect small businesses from the large oil companies.

Even the officials at DOE's regional office in Atlanta admit that the regulations they enforce are unfair and are forcing hundreds of independent service station operators into bankruptcy.

"How the hell can we expect a service station owner to gather all the data and fill out all the forms required (to get a higher gasoline allocation), or to hire an attorney to do so?" asked Jim Easterday, district manager of DOE's Energy Regulatory Administration in the Southeast. "For an existing station to get an increased allocation, he almost has to be bankrupt."

"This is one of the most disastrous things I've seen in 23 years of watching this industry," said Jack Houston, the Georgia-based acting executive director of the Service Station Dealers of America, an oil industry trade association. "It's not the staff people (at DOE) who are to blame. It's the rules that are wrong."

The "rules" are federal gasoline allocation regulations. Since early 1974, a few months after the Arab oil embargo, the federal government has told the oil companies that they must divide their gasoline fairly among the nation's service station owners. Government officials were fearful that the oil companies would use a period of tight supplies to eliminate competition, particularly from private brand dealers such as the Jim Wallace or Buddy's stations.

Traditionally, after the major oil companies purchased all the oil they needed, the remainder was dumped on the spot market, where it was purchased by the private brand dealers, generally at low prices. But now the oil companies need all the gasoline they can get, and whatever gasoline reaches the spot market sells for premium prices.

So the regulations, drafted in 1979, were worded to force the major oil companies to supply gasoline to the private brand dealers, allowing them to stay open.

A second provision in the regulations states that new stations can get gasoline based on "comparable" stations already operating in the same area. With certain restrictions, any existing station which has been out of business for more than six months qualifies as a new station.

But when new or private brand stations get more gasoline, the existing dealers get less. Most neighborhood service stations—about 45 percent nationally—are so-called "branded independents," small-business operators who purchase their gasoline from a major oil company and operate under its trade name—for example, Texaco Gulf.

The amount of gasoline they get each month is based on a percentage—currently averaging about 80–85 percent—of what they received in the same month in 1978. Each oil company takes the total amount gasoline on hand and divides it proportionately among all of its customers—new stations, private brands, and existing branded independents alike.

When new stations open, or when the oil company is ordered to supply gasoline to a private brand dealer, the new supply must be subtracted from the total amount the company has on hand for all its customers, thus reducing supplies to its older customers even further below 1978 levels.

So although drivers may see new stations opening up, the amount of gasoline available for sale remains the same. "All we are doing is cutting an existing pie into smaller and smaller sections," DOE's Easterday contends.

But while one division of the energy department was working to ensure that adequate—and usually large supplies of gasoline were provided to private brand dealers and new station operators, another division was deciding that supplies for existing stations should be strictly rationed.

Petroleum jobbers, who operate most of the private brand stations and chains of branded independent outlets, quickly found a loophole in these regulations. The rules allow such a dealer to shift up to 30 percent of his gasoline allocation from one of his stations to another, thereby helping to even out inequities.

In contrast, most independent dealers operate only one station. Further, they allege—and energy department officials agree—in some instances jobbers opening new stations are getting high fuel allocations unfairly, by illegally comparing their stations to others which are actually much larger. New dealers fake their so-called comparables "all the time," according to DOE's Easterday. "If we think it was deliberately done, then we can go after them."

But Easterday has a staff of only 60 people to police eight Southeastern states where there are 4,000 jobbers and 60,000 service stations. While some cases of faking comparable statistics have been referred by the energy department to the U.S. Justice Department for prosecution, thus far none has gone to trial.

But why would a jobber want more gasoline than he can sell? According to federal regulations, if a jobber has excess gasoline, he is to offer it proportionately to all of his customers. That rarely happens, independent dealers claim.

"The gas business is very profitable these days, if you can get the product," said Mickey Teate, who operates a Chevron station off Interstate 20 at the Six Flags exit. "There is a black market floating around the state. Stations with big allocations can sell them privately for several cents above the going price to other dealers in a desperate situation."

One dealer—who asked not to be identified—said he had a man offer to sell him a tankload of gasoline for $1.02 a gallon, more than the price the dealer was charging at the pump at the time, and almost 16-cents above his normal wholesale price. But when the dealer tried to bargain for a lower price, the man told him he was sure he could find a dealer elsewhere desperate enough to pay his price.

Robert Sims, who runs an Amoco station at I-85 and North Druid Hills Road, has data which he says shows clearly what is happening. In support of a legal action he filed in an attempt to get a higher allocation, he produced figures which he says show that nine stations operated by independent dealers in his area have closed in the past year and a half.

In their place, seven new stations have opened, all but one of them private brand or company-operated stations. (The major oil companies operate some stations themselves—the number varies from company to company—paying the operator a flat salary).

The previous nine independent dealers had gasoline allocations averaging 30,000 gallons a month, according to Sims' figures, while the seven new stations which replaced them averaged 130,000 gallons.

Mickey Teate said he is in desperate straits himself but has refused to resort to under-the-table deals. He bought his Chevron station in 1978 and spent the first four months working from 7 a.m. until 9 p.m., seven days a week, to build up his business. "I would peek in at my kids while they were asleep in the morning and get home at night when they were already in bed. But I got my business built up to 30,000 gallons a month, and then, 'Bam!' Three new stations went in all around me."

Since they were new, the nearby stations got monthly allocations two or three times higher than Teate's existing station. Supplies from his own company began to drop, and last month he received only 17,000 gallons of gasoline.

Making matters worse, lack of gasoline has forced Teate to close his station in the evenings and to forgo opening on weekends. As a result, Six Flags has decided to install its own gas pumps inside the amusement park. They have been given an allocation of 145,000 gallons per month, Teate says.

I don't object to competition," Teate said. "But where is the fairness when the government says I can only have 17,000 gallons, and yet they're giving Six Flags 145,000?"

Additionally—although few drivers realize it—the maximum price a dealer can collect from the public for gasoline is set by the Department of Energy, currently at 16.1 cents per gallon over the wholesale price. When his oil company supplier raises the wholesale price of gas, the dealer can pass the increase on to his customers—but

he must pay his rent, utilities and salaries from the 16.1 cents and take whatever profit is left.

The energy department has tried to resolve the problem, at one point adopting regulations limiting gasoline supplies for new stations to 50,000 gallons per month. But those rules were challenged in court and overturned by a federal judge last September. DOE officials have promised relief since them, but little has been forthcoming thus far, according to SSDA's Houston.

At first glance, the independent station owner's plight has little effect on consumers. Smaller, independent stations are replaced by large, company-owned self-service outlets which operate almost around the clock and always seem to have gasoline at prices slightly lower than the branded independents.

"But what happens when you leave the office late at night and discover your car won't start??" asked John Sapp, owner of a Chevron station near Cumberland Mall. "The folks at the self-service station won't fix it—they won't even check your oil. People are so absent-minded in caring for their cars. . . . When all of the full-service stations close, people are really going to have problems."

DOE's Easterday doesn't see much hope for change. "I honestly think the old gas station is gone. It's like the grocery business in the 1950s. When the chains and supermarkets moved in, we didn't do anything to save the small grocery owner. I think we're seeing the same thing now in the gasoline business."

Senator BUMPERS. Congressman, thank you very much. Let me ask you one question. Do you think any new station ought to be allocated gasoline until all old stations have 100-percent allotment?

Mr. GINGRICH. I'm not sure I could offer you a blanket "yes" or "no" on that. I think certainly in any given county or given geographic area—I would not want to say for the whole country that you could not open up a new station in the middle of Wyoming because we had not gotten to everyone in Atlanta, but I do think it is absurd in any given area for the Federal Government to allocate and approve brand new large stations while within the same marketing area there are old or existing stations who are not being given access to as much gasoline as they want.

I think it is completely absurd use of capital investment for the country as a whole and I think in the long run it cripples competition and will move us toward company-owned vertical integration on a scale that I think in the long run will raise prices and not lower them.

Senator BUMPERS. Thank you very much. Senator Metzenbaum——

Senator MCCLURE. I would like to thank my colleague from the other body for his statement this morning and I think he has focused on the concerns that many of us have and I appreciate the willingness to come and testify and the concern that somehow we have to find an answer. Perhaps between yourself and the rest of us, we will find one.

Mr. GINGRICH. I have been told off the record that the very process of holding these hearings has already encouraged some rethinking down the street at DOE and I again want to commend this body for holding these hearings. Thank you.

Senator BUMPERS. Thank you very much, Congressman.

Our next witness is Hon. Hazel Rollins, Administrator, Economic Regulatory Administration, DOE. Welcome, Ms. Rollins.

STATEMENT OF HON. HAZEL R. ROLLINS, ADMINISTRATOR, ECONOMIC REGULATORY ADMINISTRATION, DEPARTMENT OF ENERGY, ACCOMPANIED BY WILLIAM FUNK, ASSISTANT GENERAL COUNSEL, PETROLEUM REGULATIONS

Ms. ROLLINS. Thank you, Mr. Chairman, members of the subcommittee. I have with me this morning William Funk, Assistant General Counsel for Petroleum Regulations in DOE. I have provided for the committee copies of my formal statement and I would at this juncture, with your permission, Mr. Chairman, prefer to simply summarize my formal statement.

I am, of course, pleased to be here to discuss the Department of Energy's gasoline allocation program. I would first like to announce that the Department has been busy doing some rethinking about the gasoline allocation system for quite some time.

As a consequence of that rethinking, and perhaps prodded by today's hearing, I did late Friday night issue a proposed notice of rulemaking which addresses many of the problems that will be discussed here today. I would like to briefly outline some of the major portions of the proposed rulemaking.

One, we propose to revise ERA guidelines to establish more realistic criteria for making assignments to new retail outlets. We also propose to establish realistic criteria for adjusting gasoline allocations for existing retail outlets. We propose to delete the provisions which allow resellers to supply new retail outlets on an interim basis and to certify such supply requirements to their suppliers to assure that that procedure is not abused.

We do propose to increase flexibility of refiners and resellers to reassign base period supply volumes of closed company operated and independent outlets. Those changes come into crisper focus against a brief discussion of those allocation regulations which we now propose to change.

We all know, of course, in the spring of 1979 there was a traumatic, not dramatic, change to the allocation regulation. We did several things, we updated the base period, we provided a provision for measuring unusual growth, and automatically certifying upward the additional volumes for those who qualify for an adjustment.

We also added a provision for exigent circumstance adjustments, once again so that self-certification for upward adjustment was possible. We increased the State set-aside from 3 percent to 5 percent, believing that many shortages could and should be managed by Governors within the State and we revised the allocation levels for priority users since we have seen abuses of the 100 percent of current requirements.

I would like to move quickly to questions asked by the subcommittee. Your first question was how are allocations established for new dealers and how does the magnitude of these allocations compare to those for existing dealers? Allocations for new service station owners, of course, are filed with the Economic Regulatory Administration's Regional Office of Petroleum Operations.

The application, known as form ERA-99, is submitted to the appropriate regional office. They are evaluated based on guidelines which contain, quite frankly, a presumption in favor of granting these petitions.

Volumes are assigned based upon volumes of similar types of retail operations in the same market area. For example, a new self-service station is compared with existing self-service stations in that market area. Last summer, we realized that there may be some tendency in DOE regulations to generally favor new service stations over existing service stations, and we proposed as an emergency regulation, a cap, if you will, on the allocation that could be given to new service stations.

We established a 50,000-gallon maximum which could be provided to new service stations.

Senator METZENBAUM. Is that 15 or 50?

Ms. ROLLINS. 50,000, Senator. We were challenged in court in a case which has been called the *Vickers* case. The court made a finding that the Department of Energy, or more particularly the ERA, had not followed certain procedures required by the Administrative Procedure Act and on the basis of that case, the Department decided to forego imposing what was referred to as a moratorium on service station openings.

It was a fact, of course, merely this cap. Finally, existing service stations, seeking an increase in supplies, must apply for an increase in their allocation to the Office of Hearings and Appeals. This is, quite frankly, an exceptions process.

An existing service station applying for an increase in their allocation must prove that its current allocation is causing a serious hardship or gross inequity. Quite frankly, that examination is based on an economic criteria.

It's quite obvious to see that the criteria for the two sets of service station owners are quite different. What we hope to do in proposing this revision to the guidelines, is to establish similar criteria for both new and existing service stations and more importantly, to review these applications in the same office within the Department of Energy.

The next question put forward by the subcommittee is what happens to allocations of stations that have already closed? There are two sets of circumstances and I will attempt to outline them briefly. In the case of a closed refiner-operated station, those volumes are distributed over the refiner's entire system, so that one, there is a marginal increase in the refiner's allocation fraction.

In theory, most of this volume tends to be lost to the market area where the service station has closed. However, that same refiner is free to open a new service station, even a higher volume service station in the same market area which might result in a net gain of supplies in that particular market area.

In the case of the jobber, the circumstance is quite different. The supply is generally distributed to all of that jobber's customers who generally are in the same market area. Our proposed rulemaking will consider keeping the allocations of closed service stations in the same area where there is a showing that the demand exists.

Your third question was, why are dealers receiving less than their full base period allocation if supplies of gasoline are generally plentiful? As of May 30 of this year, gasoline stocks were at 268 million barrels and that's about 18 percent above last year's stock.

We believe in spite of this very plentiful supply refiners are declaring allocation fractions below 1 for several reasons. One, the

new base period set forward in the rulemaking in 1979—November 1977 through October 1978—was measured at a time when gasoline demand was at a record high.

Demand for gasoline in these first few months of 1980, as we all know——

Senator BUMPERS. What is the base period now?

Ms. ROLLINS. The base period continues to be November 1977 to October 1978 and I should point out that the proposed rulemaking does not intend and in no way addresses changing that base period.

Demand for gasoline in the first few months——

Senator BUMPERS. I'm sorry, let me interrupt you one moment. You said something I did not understand. You said the reason allocations are below 100 percent, in spite of the fact that we have 18 percent more gasoline in inventory right now than we had a year ago, is what?

Ms. ROLLINS. I'm about to tick them off one by one.

Senator BUMPERS. Go ahead.

Ms. ROLLINS. First of all, during the base period of November 1977 to October 1978, demand for gasoline was at a record high and in the first few months of 1980, demand has been reduced dramatically. We might all discuss why, but it is pretty obvious that there is not sufficient demand today to support a fraction of one. A fraction of say 84 or 82 may be adequate in an area simply because we are not driving as much, and therefore not requiring as much gasoline as we did last year.

Others have suggested that postentitlement crude oil costs which are either unrepresentatively low or unrepresentatively high for some refiners can result in a disincentive to produce large volumes of gasoline. Those experiencing some unrepresentatively low allocation costs may simply not desire, with low cost gasoline, to gain a larger market share, being uncertain of what our regulations might do to prices, say later in the year.

The same might be true for some companies finding themselves in an unattractively high-price situation, in the entitlements program. That is, companies are not anxious to produce more gasoline at higher costs without adequate returns.

The next question the committee has asked is: What types of rulemaking is DOE contemplating on this subject?

Senator METZENBAUM. You are leaving the last question but I must confess, I don't know if you answered the question. I heard your testimony but I don't understand what you are saying as to why supply is 18 percent greater and the prices continue to be maintained at a high level.

Ms. ROLLINS. I have not attempted to address the pricing problem. I addressed the allocation problem and I will go through it again. The base period was set from November 1977 to October 1978 when demand for gasoline was quite high. In the ensuing months of 1980, demand for gasoline has been reduced while we have ample gasoline and crude oil available.

It appears that market decisions are being made by refiners simply not to produce gasoline for which there is no demand. The American public is not requiring the amount of gasoline it required last year and as a consequence, we are finding that less gasoline is being released to the marketplace.

I will cite you an example. Here in the District of Columbia, demand is down significantly. An allocation fraction, say of 98 might not have been adequate last summer for our driving needs, but an allocation fraction say of 94 or 93 in the District of Columbia would be adequate this summer simply because we have reduced our demand for gasoline by about 8 percent.

DOE regulations do not require that a refiner produce any more gasoline than he determines is necessary to meet demand. We do have the authority to issue refinery yield orders if we make some determination that gasoline is not being produced in quantities large enough to meet demand. But that is not the case this spring.

The gasoline being produced and released to the marketplace is more than adequate to meet demand, obvious by the fact that we're not experiencing——

Senator BUMPERS. Don't you have an awful lot of dealers calling you and crying about their allocation?

Ms. ROLLINS. Quite a different problem. Indeed, we have dealers calling us and we have Congressmen and Senators calling us for dealers to discuss the obvious appearance of an inequity that we are trying to address in our proposed regulations.

That is, while new service stations are receiving allocations, existing service stations who have to go another route to get additional supplies of gasoline are quite frankly not receiving as many gallons of gasoline as new service stations on balance.

Senator BUMPERS. What I can't understand is if we have 18 percent more gasoline than we had last year, if demand is down dramatically as you pointed out and stocks are up 18 percent, why is most everyone who wants 100 percent allocation not getting it? Demand is still—demand is not as high right now as it was during the base period, is it?

Ms. ROLLINS. No, it certainly isn't. The reason some existing service station owners might not be getting as much gasoline as they want has to do with the fact that each refiner who produces gasoline distributes that gasoline in the marketplace under a single allocation fraction.

There are some authorities within the DOE to permit those fractions to be moved up or down, depending upon need among the various PAD's. But generally there is a single allocation fraction for each company producing gasoline and to the extent that a given quantity of gasoline is available, then it is divided among all of those who have a share in the allocation because they were in the marketplace during the base period.

We first began with the allocation fraction——

Senator METZENBAUM. You are talking about two different kinds of allocations, as I understand it. One, you are talking about the allocation by the Government and the other is—now you are talking about the allocation cutbacks ordered by the refiners. Is that correct?

Ms. ROLLINS. That's correct and perhaps we can help ourselves a bit. I tried to talk about upward certification when I talk about the Department's action.

Senator METZENBAUM. Let me ask you, is the Government being a party to holding back supply from the marketplace and the net result is higher prices for the American public? Because if the

gasoline station dealer who wants gasoline can't get it, and yet he is willing to sell it 2 cents a gallon less than somebody else who can get it under the procedures now in effect, then the Government is preventing the oversupply in the marketplace from operating in a normal economic manner.

Ms. ROLLINS. I think any time you have the Government intruding in what had been perceived as a traditionally free market area, you will find that some of the disequilibriums might be quite handily put at the feet of the regulatory agency.

The question you ask I think turns on our perception of what the Department has done. We all admit and certainly know that DOE has set two very different criteria for the receipt of gasoline. For new stations allocations are administered easily, with a liberal attitude on granting applications for gasoline. Existing stations requests for increasing allocations are administered by the Office of Hearings and Appeals, which has stringent requirements that must be met. An existing service station almost has to show something close to bankruptcy to get additional supplies.

Senator BUMPERS. Gentlemen, let's let her finish her testimony and then get to the questions or we never will get through. I am the one who started this and I am the one who will stop it.

Senator METZENBAUM. I always follow my leader.

Senator BUMPERS. Go ahead, Ms. Rollins.

Ms. ROLLINS. You asked the question of what type of rulemaking is DOE contemplating and I have already outlined the major problems we attempted to address. I would now point out that we are not considering any rulemaking that would directly affect our allocation fractions. We have already taken action to amend the equal application rule and to amend our price regulations as related to Alaska North Slope. We don't think we need to do anything else there.

Five, you asked what problems are the regulations currently creating for dealers, jobbers, refiners, and the public? Very quickly, at the retail level, marketers are experiencing increased demand and are having problems increasing their allocations.

Existing service station owners object to new service stations obtaining interim supplies of gasoline. They object to new service station owners obtaining gasoline supplies generally. Jobbers are not experiencing any allocation problems where they have multiple service stations simply because if there are downward adjustments, those volumes are available to be distributed within the jobber network.

Refiners assert that the new assignments and upward certification from jobbers are depressing their allocation fractions. The notice of proposed rulemaking hopes to address all of these problems in a more realistic fashion.

Finally, in closing, what I would also like to say is that this market generally has been a very dynamic market over the past 5 years. I don't think we will ever see demand for gasoline as high as it was in the fall of 1977 through 1978.

What we are going to see is a constantly diminishing demand for gasoline. There are many actors in the marketplace, all of whom want to maintain a viable share of the marketplace. Almost any action that the Department of Energy takes to relieve any one of

the problems I have suggested as viewed by independent marketers, by refiners, and even by the jobbers will, quite frankly, not satisfy any other group.

My honest opinion, after having spent some few years in this business is that the real solution to this problem, quite frankly, is that we finally arrive September 30, 1981, at decontrol. We will not have to spend time trying to determine whether it has been ERA's or the Department's inappropriate rulemaking or administrative tardiness or lack of staff that has created a problem in the marketplace.

The marketplace will finally settle down and take care of its own needs. I am now ready, Senator.

[The prepared statement of Ms. Rollins follows:]

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STATEMENT OF HON. HAZEL R. ROLLINS, ADMINISTRATOR, ECONOMIC REGULATORY ADMINISTRATION, DEPARTMENT OF ENERGY

Mr. Chairman and members of the Subcommittee, I am pleased to have this opportunity to discuss with you the gasoline allocation program administered by the Economic Regulatory Administration (ERA) in the Department of Energy (DOE).

Before responding to the questions raised in your letter of invitation, I will summarize changes made to the gasoline allocation program last spring and summer in response to gasoline supply problems resulting from the curtailment of Iranian crude oil exports. I will also discuss with you possible amendments to the gasoline allocation regulations which are under consideration by the Department of Energy.

It is important to note that fundamental changes are occurring in the country's gasoline market. The nation's motorists are cutting down on the use of gasoline and the gasoline market is shrinking. We have to recognize that this means a smaller market for the industry. We should not overlook this factor since it is part of the problem we are here to discuss today.

1979 Changes to the Gasoline Allocation Regulations

Beginning in March 1979, we made a series of changes designed to make the allocation program more closely reflect current market conditions.

The original allocation regulations issued by the Federal Energy Office in January 1974 provided for the allocation of gasoline to retail stations based on the volume of gasoline each station had sold in the comparable month of 1972. DOE recognized that the 1972 base period would be inappropriate in future shortages and in January 1979 issued standby regulations providing for an updated base period. As supplies tightened in late 1978 and early 1979, it became obvious that demand for gasoline would not be adequately met if we continued to allocate on the basis of 1972 gasoline sales. In order to more closely reflect changes in supply patterns and demand shifts that had occurred since 1972, we invoked the standby regulations to update the base period to the most recent 12-month period of adequate supplies -- November 1977 through October 1978.

At the same time, we recognized that there would be situations in which some stations had experienced unusual growth in sales since the end of the base period (October 1978). Therefore, we included a provision under which retail service stations whose sales during the five month period from October 1978 to February 1979 averaged at least 10 percent more than their base period purchases would receive an increased allocation.

In addition, we adopted an exigent circumstances provision to enable a station operator to obtain a larger volume of gasoline if the new base period volumes did not reflect normal conditions. For example, a station operator whose base period sales were low because of road repairs on the street in front of his station could have his allocation increased.

To provide more flexibility the percentage of the gasoline sold in the state for the state set-aside to meet emergency needs was increased from 3% to 5%. Additional authority was also provided to permit set-aside gasoline to be directed to service stations to alleviate end-user supply problems. We also revised allocation levels for priority users.

Formerly, priority users were entitled to 100% of current requirements. Now, they are entitled to 100% of base period volumes not subject to an allocation fraction. This change provided us with the flexibilities to direct supply to more closely reflect the market conditions as they existed last year.

I will now address the questions raised in your April 16, 1980 letter of invitation.

1. How are allocations established for new dealers and how does the magnitude of these allocations compare to that for existing dealers?

The ERA has the responsibility for assigning allocations for gasoline for new service stations. The operator of a new retail station, or an existing station which has been closed for at least 6 months, must file form ERA-99 with the Office of Petroleum Operations in a regional office to request an assignment of a base period volume. The application is evaluated using ERA guidelines originally issued in 1975 and revised in 1976 and 1977. The guidelines contain a presumption in favor of granting petitions for new retail outlets and include the following: an assessment of whether the applicant has a willing supplier; whether approval of the request will significantly reduce the volume of gasoline available to that suppliers historic customers; what, if any, adverse effect the approval of the application would have on existing independent marketers serving the same market area; and whether additional suppliers of gasoline are needed in the market area.

The volume to be assigned by ERA is determined by examining base period volumes of outlets of similar size and type of operation in the same or a similar market area. For example, a new self-service station would be compared with an existing self-service station having the same number of pumps, islands, etc., and serving the same or a comparable market area. An average of the monthly volumes of the comparable stations would be assigned to the new self-service station.

The applicant also provides ERA with a list of retailers in the same market area. We then request comments from those outlets and any others known in the area. Their comments are evaluated and used in determining whether to make the assignment. The regulations provide that base period volumes will not be assigned on any basis which will give a new retailer an unfair advantage over existing firms.

Last summer we issued a rule to reduce the disproportionate amount of gasoline that would otherwise be channeled through new outlets at the expense of existing ones. This rule limited allocations of gasoline to new stations to 50,000 gallons a month. However, Vickers Petroleum Corporation obtained a permanent injunction against this rule as it applied to them. As a result, DOE suspended the use of this rule.

The operator of an existing station seeking an increased allocation faces a more difficult task than the applicant for a new station seeking an initial supply. ERA does not have the responsibility for increasing supplies to existing stations. When the allocation regulations were first issued in January 1974 requests for increased supplies by existing stations and requests for supplies by new stations were both handled by the Office of Petroleum Operations in the regional offices of the Federal Energy Administration. However, since late 1974 the Office of Hearings and Appeals has had responsibility for providing adjustments for existing stations.

An operator of an existing station seeking an increase in supplies must apply for an exception to the Office of Hearings and Appeals and prove that its current allocation is causing a serious hardship, a gross inequity or an unfair distribution of burden caused by DOE's regulations. In determining whether to grant relief, OHA may examine factors such as the economic situation of the applicant and the impact on consumers in the relevant market.

We have not to date aggregated total assignments to new service stations nationally, nor has the Office of Hearings and Appeals aggregated total increased allocations to existing stations. Without this data, we are unable to assess the magnitude of new allocations for new stations versus increased allocation for existing stations. We are concerned, however, that the volumes allocated to new service stations are substantially higher than the adjustments provided for existing stations.

In light of the impact that assignments for new stations have had on existing stations I believe the presumption in DOE's guidelines in favor of granting new station allocations is ripe for reexamination.

In the allocation rulemaking soon to be issued we will propose the adoption of more realistic criteria for granting assignments to new retail outlets. We will also consider proposals for more realistic criteria for adjusting allocations for existing stations.

In addition to the proposed rulemaking, we have begun to work on implementing a data retrieval system which will supply us with information on types of stations, volumes assigned and areas of the country receiving new assignments. After we search our files and enter historical data in the system we will be able to use this information in evaluating applications and certain impacts of ERA's assignment orders. This system is in an early stage of development. We plan to test the system in one of our regional offices early next month.

The Form ERA-99 is also currently being revised. The existing form does not request all the information we need to evaluate an application. The new form will eliminate the necessity of going back to the applicant for additional information and will reduce the time required to process an application.

2. What happens to the allocations of stations that have closed?

There are two sets of circumstances that can occur when a service station closes. In the case of refiners directly supplying company operated or lessee stations, the volume from the closed station becomes available to be distributed by the refiner. That volume must be distributed over the refiners entire system and marginally increases the refiner's allocation fraction. In theory, most of the volume of a particular closed station is lost to that marketing area. However, the same refiner may open a new, better located, higher volume station in the same market area which could result in a net gain of product in the area.

In the case of distributors or jobbers who cease to supply a service station, the jobber retains the volume which it generally distributes to all of its customers, who are typically located in a smaller geographic area.

Existing regulations provide a degree of additional protection against loss of product from a market area upon station closings. For example, a successor moving into the same site as a closed station is entitled to receive the same volume his predecessor received. In some instances the former operator may transfer the volume to another location but only in the same general market area. Finally, an independent marketer could transfer the volume from a closed service station to another outlet which he also operates. This last action requires DOE approval.

These regulatory provisions may not provide sufficient protection against the loss of product from market areas directly served by refiners. Any proposed revision to our allocation rules will consider keeping allocations of all closed stations in the same geographic area if there is demand for the volume.

3. Why are dealers receiving less than their full base period allocation, if supplies of gasoline are generally plentiful?

Current supplies of motor gasoline are at record levels. As of May 30, 1980, stocks were at 268 million barrels, 18 percent above last year. Inventories should be ample for the summer driving season if current demand trends continue and there is no further interruption in crude oil supplies.

Nevertheless, many refiners are still declaring allocation fractions substantially below 1.0. We believe this is due to a variety of reasons. When DOE established a new base period using the 12-month period from November 1977 through October 1978, it chose a period during which gasoline demand was at record high levels. The 1978 demand levels may not again be reached for a number of years. Gasoline demand for the first four months of 1980 has been almost 8% below demand in the same months of 1979. Thus, there is little reason for many refiners to produce the volume of gasoline which would support the declaration of an allocation fraction of 1.0, because there is not sufficient demand.

In addition, some refiners are still having considerable difficulty obtaining at what they consider to be reasonable prices a sufficient volume of high quality crude oil necessary to produce sufficient gasoline to support the declaration of an allocation fraction of 1.0. We expect that this situation will continue for as long as the world crude oil market remains unstable.

Finally, some refiners find themselves with post-entitlements crude oil costs which are either unrepresentatively low or unrepresentatively high. In either case, a disincentive to produce large volumes of gasoline can result. In the first instance the refiner may prefer

not to incur a temporary increase in its market share with lower priced gasoline. In the second instance the refiner may recognize that its cost-based price is so high that it would not be possible to sell a greater volume of gasoline at that price.

4. What types of rulemaking is DOE contemplating on this subject in the immediate future?

We are not considering at this time any rulemaking directly impacting on refiners' declarations of allocation fractions.

We have already adopted amendments to our price regulations that remove disparities between the maximum lawful selling prices of independent retailers and outlets operated by wholesalers. We have also amended the equal application rule to remove some of the restraints which required refiners to sell gasoline at retail prices substantially below their own and other independent retailers. In addition, last week we held hearings on a proposal to correct the Entitlements price advantage that firms having access to Alaskan North Slope (ANS) crude oil have over other refiners. This advantage has resulted in retail price disparities in local markets heavily served by refiners having access to ANS crude oil.

We will shortly issue a notice of proposed rulemaking which will propose changes to the allocation regulations. I will discuss these changes in my response to the next question.

5. What problems are the current regulations creating for dealers, jobbers, refiners, and the public?

DOE's current allocation regulations are creating a number of problems. At the retail level, marketers experiencing increased demand are having great difficulty in increasing their allocations. As I have indicated, to increase its base period volume, an existing retailer must prove that its current allocation is causing it a serious financial hardship or a gross inequity. New stations by contrast receive allocations on the basis of a less stringent test. We are aware of this inequity and intend to correct it.

Existing station owners and their suppliers also object to the rule which permits interim supplies of gasoline to be provided to new stations pending action by the Department on filed applications. This rule has resulted in some new stations receiving unduly large interim volumes. We will also address this issue in our forthcoming rulemaking.

Jobbers are generally not experiencing the allocation problems affecting other segments of the industry. For the most part, they have the flexibility to retain and redistribute gasoline from their closed stations to existing customers, and they can readily take on new customers and certify their requirements upward.

Refiners assert that new assignments and upward certification from jobbers depress allocation fractions and force them to direct gasoline where it may not be needed. As I indicated earlier, we intend to propose a more realistic approach to new service station allocations based in part on demand shifts.

The rulemaking to be issued is comprehensive in scope. I will now provide you with a brief summary of some of the topics we will consider covering in this rulemaking.

- Revise ERA's guidelines to establish more realistic criteria for making assignments to new retail outlets.
- Establish realistic criteria for adjusting gasoline allocations for existing stations.
- Revise the provisions which allow resellers to supply new retail outlets on an interim basis and certify such supply requirements to their suppliers to ensure the procedure is not abused.
- Increase flexibility of refiners and resellers to reassign base period volumes of closed company-operated and closed independent retail outlets.

These issues are the subject of concern expressed by the Small Business Administration, as well as numerous members of Congress, retail service station associations, individual station owners and the public generally.

I would like to emphasize that we will be issuing a notice of proposed rulemaking. We will solicit comments from all interested parties. I also intend to take any action available to the ERA to improve the management of our allocation program.

In closing, experience has taught us that most regulatory fixes bring with them new and sometimes unanticipated problems. While we are hopeful that this rulemaking proceeding will improve our present allocation program, we continue to believe decontrol of gasoline is our best long-term solution.

Mr. Chairman, this concludes my formal statement. I will be happy to answer any questions of the Subcommittee.

Senator BUMPERS. Let's go by the 5-minute rule. Let me ask you this question. If we were to abolish the allocation system and decontrol the price of gasoline today, what effect, in your opinion, would that have on the marketplace?

Ms. ROLLINS. Certainly two things. One, we would decontrol prices and abolish the allocation system at the same time.

Senator BUMPERS. Right.

Ms. ROLLINS. We have spent a number of years comparing the movement of gasoline prices and home heating oil prices which were just about in tandem when we first began price and allocation controls. The very dramatic rise in gasoline prices, say over the last 18 months, has to be attributed to increased prices of crude oil outside the United States.

Senator BUMPERS. Plus decontrol.

Ms. ROLLINS. I think we will see, except for additional action by OPEC to increase prices, very little happening in terms of prices increasing. I am certain about one other thing and that is that the allocation of the product would certainly take place in a manner that would satisfy more consumers and would satisfy more of the people in this business, both from the distributing end and the retail end.

Again, my comparison is supported by examining the home heating oil market where there have been no problems with supply or distribution since decontrol in 1976.

Finally, is the American public ready for this decontrol at this moment where we are now trying to ratchet down inflation? I think even if our perceptions were that the price impact would be de minimis, I don't believe the public is as yet ready for that action.

Senator BUMPERS. Do you get as many complaints about allocation from refinery-owned station operators as you do from independents?

Ms. ROLLINS. Well, not as many, but I suspect that is simply because we seem to hear more from the smaller businessman. My belief is that the major refiners perhaps go someplace else to complain. We have received complaints but not nearly as many.

Senator BUMPERS. How many people do you have monitoring the allocation system to make certain that it is administered fairly? You have 150,000 dealers in the country, how many people do you have monitoring them?

Ms. ROLLINS. I have very few people monitoring the system. I can describe to you what exists in terms of the allocation program. I have stated already that generally this work is done in the regions. There are approximately 107 people in the 10 regions, roughly 10 for each region, who bear the responsibility of implementing the allocation program for new service stations. Again I point out the program for existing service stations is carried out somewhere else in the Department.

A review of whether we have met the standards of the legislation or met the standards of our own rulemaking or guideline in those allocation applications is, quite frankly, made in the Office of Hearings and Appeals.

Anyone who is dissatisfied with an allocation order from the ERA would appeal it to the Office of Hearings and Appeals If one would quantify the number of appeals taken to Mel Goldstein's office, I think one would have a sense of how often people are dissatisfied.

But I suspect that that merely states that almost anyone who has come in for an allocation wants more, not less.

Senator BUMPERS. You have a real dilemma here in your operation trying to make certain that everyone in business is treated fairly and at the same time allow new introductions into the market, new operators to get into the market. It looks like an almost impossible dilemma.

Let me ask you this. Do you or does DOE as a matter of policy favor continuation of the allocation system and certainly a standby allocation system when these expire?

Ms. ROLLINS. Senator Bumpers, I am aware and the Department as an institution is aware that we will need some standby authority on the books in October of 1981. The Department has not yet completed its review of the system that we think should be in place so I find myself in a bit of difficulty attempting to speak for the entire Department.

I have no problem at all speaking for the ERA who will be making their recommendation to the Secretary of Energy. I believe we will need a standby allocation system. The reason I suggested in our earlier discussion that decontrol would be appropriate if all things were right at this time is simply because we find ourselves in a time when there is actually less demand and ample supply.

These regulations are important to try to cure many of the problems that will be addressed this morning. To the extent that we come up with a better allocation scheme today, it simply puts us in a better position to recommend what should be left on the books in 1981.

Senator BUMPERS. Senator McClure.

Senator MCCLURE. Thank you, Mr. Chairman.

You said earlier in response to a question of what would happen if there was immediate decontrol of gasoline pricing and the abandonment of allocation. I think I understood your answer to mean that it was not based upon decontrol of the price of crude oil but

decontrol of the finished product and gasoline. Am I correct that your answer was based on that assumption?

Ms. ROLLINS. That is correct. But I think it's fair to say, as we are moving gradually toward decontrol of crude oil, any impact will be de minimis.

Senator MCCLURE. You indicated with current abundant supplies of gasoline that there would be virtually no or de minimis impact on price in the marketplace, yet you said that the public is not ready for it. How do you conclude that the public is not ready for it if as a matter of fact there is de minimis price impact?

Ms. ROLLINS. I don't think that the public understands, what goes into the control of prices of gasoline.

Senator MCCLURE. They understand what the price is though and it is the price movement that concerns the public generally. If there is no price movement, why would they be distressed with it?

Ms. ROLLINS. I made one other point which I think was significant. I said that there was price movement that was within the control of the U.S. Government. However, I went on to say that we cannot insulate ourselves from any price movement on the part of OPEC.

Senator MCCLURE. You are assuming they will see gasoline price increases and blame it on decontrol rather than other prices, is that correct?

Ms. ROLLINS. Yes.

Senator MCCLURE. What are the other things you are concerned about that led you to think the public is not ready for it?

Ms. ROLLINS. In this business, I have learned that those of us who predict no price impact find ourselves often 2 or 3 years down the road trying to explain how it was that we missed the probability of the occurrence of one phenomenon over the other.

Senator MCCLURE. Two or three years down the road does not include what the public is ready for now. I was a little puzzled. If as a matter of fact we can get decontrol of gasoline prices with very little price effect as a result of the decontrol, why are we cowering in the corner afraid to try it?

Ms. ROLLINS. We have a hotline that the public uses from time to time to call us and tell us what they think about what we do and what other departments do. Quite frankly, it is a review of the kind of comments we receive that leads us to believe that perhaps the public ready for decontrol.

Senator MCCLURE. So we are maintaining the allocation system in order to con the public into thinking we have done something for them?

Ms. ROLLINS. I don't think that's quite——

Senator MCCLURE. Instead of to them. [Laughter.]

Let me shift for a moment to something else. You indicated that the allocation system did not work very well and I think most of us understand that. We are still concerned about what happens within the allocation of supply. Senator Bumpers and Senator Metzenbaum earlier were asking about why do we need allocation when there is a surplus and you indicated that, well, the allocation can apply in different ways.

What you are really saying is that there may be a shift in market share and there are a great number of people in the

marketing business, either the refiner, the wholesaler, the jobber, various kinds of retail outlets who may be involved. Each one is afraid they may be disadvantaged by a change in the marketing method.

So we have an allocation system designed to protect them rather than designed to protect the public. That may be legitimate but if there is a surplus of gasoline today, why is it that we cannot say to an independent service station owner, you can have all you want?

Certainly, the refiner who wants to get rid of the independent, if indeed that is the case, or change the market share, is going to hide behind an allocation fraction to accomplish what they want with respect to a shifting of the market share.

The independent who might be willing to shave price in order to maintain market share is not given the option of fighting back in that manner. Similarly, neither is the retailer, the refiner and the company-owned outlet, given the option of shaving price or changing allocation in order to gain market share because you have Government regulations standing in the way and the public never sees which it is.

Is it you who is doing the changing in market share, is it the refiner who is doing the change in market or is it market forces that are doing the change in market share? If you have an independent refiner out there trying very hard to maintain his business or increase it and across the street a new refinery-owned outlet opens up and there is a surplus of gas and you can show there is and you are going to get it to that company-owned outlet, the independent across the street can't get more in order to fight back.

How do you sort all that out, or do you?

Ms. ROLLINS. I think every time we propose a rulemaking on gasoline allocation, somebody purports to try to sort it out. I would like to go back and make a few comments. First of all, the proposed rulemaking does seek public comment on the question of whether we should in fact just decontrol supply and distribution of gasoline.

The question is posed to the public and it might tend to balance the information we receive from people who simply call in. You posed a question that I think is best summarized like this. If there is a surplus of gasoline, why not simply permit anybody wanting that surplus to receive an adequate allocation?

I think at a time when we have patted ourselves on the back because the American public does not require the gasoline currently in stock, it would be a tremendous error to make gasoline available where there was no demonstration of need.

Senator MCCLURE. Why, because they couldn't sell it and would it be shown that they couldn't sell it or because they might?

Ms. ROLLINS. No, because people might also jump in their cars again and begin to drive.

Senator MCCLURE. Allocation then is a rationing system?

Ms. ROLLINS. That's not to suggest it's a rationing system.

Senator MCCLURE. You have indicated you want to suppress demand.

Ms. ROLLINS. I said it would simply be foolhardy to put gasoline in an area where there was no demand.

Senator MCCLURE. Because people might use it if you did?

Ms. ROLLINS. If there was no allocation program at all, the marketplace would be making those decisions anyway. No one wants to buy and store gasoline he cannot pump.

Senator MCCLURE. That's quite different from saying we are not going to give it to them because people might use it if we did.

Senator BUMPERS. We will let you answer this on Senator Domenici's time—I'm sorry, Senator Metzenbaum.

Senator MCCLURE. Answer it on Senator Metzenbaum's time.

Senator METZENBAUM. You can still answer it on Senator Domenici's time.

Senator DOMENICI. I will be leaving shortly. [Laughter.]

Senator METZENBAUM. Has there been an increase in the percentage of refiners or jobblers who own retail outlets?

Ms. ROLLINS. Senator Metzenbaum, those questions regarding percentage of gasoline supplies made available to any of the marketers of gasoline are very difficult for me to answer.

Senator METZENBAUM. Why?

Ms. ROLLINS. Simply because the Department has not historically retained information in a retrievable fashion that would permit me to provide you that answer. I have, since I returned to the Department of Energy, set my regional allocation staff, with some assistance, about going through these mammoth records, to collect this information——

Senator METZENBAUM. I don't mean to cut you off but the information is available because the U.S. Department of Energy——

Ms. ROLLINS. I'm sorry, I misunderstood you. If you are talking about market shares, of course the question can be answered. But if you are asking the question, what did DOE allocate through its regulations——

Senator METZENBAUM. I'm talking about market share. I'm talking about whether there has been an increase in the percentage of refiner or jobber-owned retail outlets?

Ms. ROLLINS. I can answer those questions on the basis, not of data that the ERA collects, but that the Department collects generally. While I do not have the figures firm in my mind, what I recall is that the growth in market shares has occurred with jobber-owned outlets and service stations and the resulting loss, it is my recollection, has been experienced by the independent gasoline marketer.

Senator METZENBAUM. The facts are between 1975 and January 1980, the refiner marketers increased their position from about 14.8 percent to 18.6 and the branded independents went down from 77 percent to 69 percent which would indicate that the allocation system is working very harmfully to hurt the independent and has helped the integrated oil companies really squeeze out the independents.

My question really is not what the facts are because I know the facts, but why has ERA not moved to correct the situation before now?

Ms. ROLLINS. ERA has been moving to correct the situation for quite sometime. This proposed rulemaking is a very complex rulemaking. One of the alternatives to an allocation system that might seek to control the allocation of marketers who had willing suppliers as well as to control the allocations to independent marketers

who often do not have willing suppliers, is to de facto decontrol supplies to all of those retail marketers who have willing suppliers and focus on the independent marketer who has a problem obtaining a supplier. The adjustment could be made by maintaining the market shares as they are today and holding the status quo.

There are as many solutions to this problem as there are people who spend time examining it. Part of the problem has been to try to find the correct solutions to these problems. Quite frankly, one of the other reasons it has taken ERA so long to promulgate is that the ERA has experienced a turnover in top leadership during the last of 1979 through the first of this year where we have had an acting administrator and finally another administrator, Mrs. Rollins. It has taken me some time to work with my colleagues in the Department and determine what it was we wanted to propose.

Senator METZENBAUM. What is the average allocation for gas stations in this country, average gallonage?

Ms. ROLLINS. I am told that it varies by type of station but if one were to strike an average it would be from about 50,000 to 74,000 gallons.

Senator BUMPERS. Average?

Ms. ROLLINS. Yes.

Senator BUMPERS. 150,000 dealers? That's staggering, I can't believe that.

Senator METZENBAUM. I have difficulty believing that.

Ms. ROLLINS. That's the difficulty one has when you talk about averaging. We have to take into account the very small rural service station that may be pumping only 6,000 gallons a month and you stack that up against some of the real comers that might be pumping 200,000 to 300,000 a month and you come up with an average that rarely makes sense. To try to focus on an average is misleading because few people are.

Senator BUMPERS. When you get off the interstate in my State, we might have half a dozen or 10 of those big truck stops that pump a million or more gallons a month. But when you leave the interstate, you are back down to the 10 to 30,000-gallon-a-month range, almost all of the stations. Anyway, excuse me.

Senator METZENBAUM. I have difficulty comprehending the matter of providing a new station with 50,000 gallons a month allocation when many stations in this country are certainly not getting anything close to that. I really have difficulty understanding that and I have difficulty understanding your statement that a refiner can close his station and then open another one up in the same market area and get a larger allocation.

I can't quite—that does not follow to me. If you close the station and open another one up, why do you end up with a larger allocation? That seems to me to be pretty smart business and maybe that's what everyone ought to do.

Ms. ROLLINS. Senator Metzenbaum, that is simply the way the current regulations that fashion this allocation program permit a marketer to conduct himself. One might argue that if there were demand and someone makes the decision to invest the money to open a new service station that pumps that many gallons, there must be somebody there buying it.

The alternative is to invest that money and offer to sell gasoline where there is no demand and I don't think anyone is doing that today. If you would argue that the marketplace ought to accept the allocation application of an existing service station owner that might have the same opportunity to pump that gasoline, I would agree with you and that is one of the problems I have attempted to address in my proposal.

I don't personally think that what we will want to do is stave off competition by determining who gets how much. I think demand ought to determine that and within the rubric of fashioning this regulation to the best I can, I hope to have demand fashion the measure.

Senator METZENBAUM. The little fellow the Congressman was speaking about who got 17,000 and was cut down to 83 percent of that, he has demand and why is he not an equal person as compared to the new station that will get 50,000 gallons?

Ms. ROLLINS. In the old regulations which I did not write and did not have a thing to do with fashioning, he can't be. In these new regulations which I have a lot to do with, hopefully he will be and that is the reason we have come forth with these proposals.

Senator METZENBAUM. On page 6, you said we have not to date aggregated total assignments to new service stations nationally nor has the Office of Hearings and Appeals aggregated total increased allocations to existing stations.

As I look at that statement, I say to myself, why not, that is purely a mathematical computation. That's running a tape in order to determine that. Why is that so complicated that you haven't done it?

Ms. ROLLINS. Senator Metzenbaum, that demands that you first of all have kept the tape. I cannot speak for Mel Goldstein and what he puts into his case management system but the ERA, until January when I took office as its Administrator, had no capability to collect in a sophisticated or even a simple data retrieval instrument any information about cases it has processed, amounts it awarded or cases it rejected. All of that information was kept by hand and that's why we have no capability to feed it off the tape, there is no tape.

Senator METZENBAUM. Since you've been in the position, is that data available?

Ms. ROLLINS. That data is being made available. Collecting data by hand to feed into a computer system is not done overnight and I've indicated the size of the staff in the regions. One region, region X, has that capability. The region in Atlanta, region IV, is beginning to build that capability.

Senator METZENBAUM. Ms. Rollins, I don't understand. What do you need a computer for to determine aggregated total assignments to new service stations, that's just a mathematical number. We gave 20,000 gallons more here, 50,000—what is so complicated, why does the Government make things so complicated?

Ms. ROLLINS. Last year, Senator Metzenbaum, there were 34,000 applications for upward adjustment filed with the Department of Energy. Those applications were acted on by hand and that information, when the cases were closed, were simply closed in the file and put in the drawer. Anyone wanting to know, and on occasion

we have provided information for some States by hand and it has taken months.

Senator METZENBAUM. You said since January you are now keeping it. I am asking why do we have to make a big deal in order to compute it?

Ms. ROLLINS. I'm not making a big deal but it takes time, sir. I have been firsthand involved in taking information from a case review system and putting it on computer.

Senator METZENBAUM. Put it on an adding machine, don't put it on a computer.

Ms. ROLLINS. Then I would only have information for this week and next week somebody else would want it.

Senator METZENBAUM. It's proof positive that Government can always make things so much more complicated than they really are.

Ms. ROLLINS. I don't think that's complicated. It will provide a tool that would allow us, once it is finished, to go in and obtain the information you are asking today——

Senator BUMPERS. Ms. Rollins, address your answer to Senator Domenici because he is now on. [Laughter.]

Senator DOMENICI. I don't want to hear your answer. [Laughter.]

We will wait until Senator Metzenbaum gets a turn in 30 minutes here.

Ms. ROLLINS. Fine, sir.

Senator DOMENICI. I just have a couple. I understand that the hearing is principally dealing with current allocation. Could you, however, share with me and the committee a little background on what went wrong with the system during the shortage of 1979?

It seems to me that any allocation system ought to meet the test of shortages or we ought not have it around. We have plenty now but we still have problems because of the regulatory lag that is here. But obviously the Iranian shortfall was not a very big shortage in 1979.

Yet GAO indicates that this whole allocation system failed miserably then. They even contend that the allocation had some counterproductive aspects since some regions were much shorter than they should have been because there was not any willingness to have region-to-region allocation.

Have you searched that period of time, and why didn't the system work? What are you doing to correct it, and what can we do to correct it? First, could you tell us what the shortfall was so we will get some parameters? It certainly wasn't 20 percent.

Ms. ROLLINS. The shortfall was about 7 percent during its height. I think several things happened Senator Domenici. We have been forced to examine what we did and what we proposed in the early part of 1979 and think about how we would have done it differently.

The first thing that happened, as you will recall along with me, when we at the Department recognized that there would be some shortfall from the Iranian revolution, we proposed some standby regulations which attempted to move the base period forward.

That proposal had been on the books as a standby regulation. When it became obvious that the result of the Iranian revolution would result in a shortage of supply, it was determined that we

would activate that standby regulation which would change the base period.

My view in retrospect quite frankly was that that was the wrong time to change the base period. We caused the system to have to paper itself in terms of reporting information first of all on who was locked into a supply/purchaser relationship, to finally sift out what allocation supplies should have been.

More importantly, where parties could not agree which often happens when you have one person or entity perceived as being weaker than the other negotiating, the result of any disagreement in those regulations which should have worked beautifully, was that the Department of Energy was flooded with these 34,000 pieces of paper I have spoken about.

Interestingly enough, Melvin Goldstein, in the Office of Hearings and Appeals, has experienced the same kind of phenomenon.

The first thing I would do is suggest that in a time of shortage, one does not want to change the rules. We must all understand what the rules are and there must be adequate documentation so that preexisting relationships or newly assigned relationships are certain and that information has to be available to the regulator.

Second, and the GAO report certainly points it out, it is no mystery that the Department of Energy, since 1976 as a budgetary discipline, has pretended that gasoline was decontrolled. The average 10 people that I cited to you were now in the regions for the purpose of running the program, quite frankly were not adequate to stand up under the onslaught of many applications for adjustment that resulted from the shortage and these new regulations.

Moreover, it is quite fair to say that the Department perhaps, and it certainly does today, has to come up with a methodology where it can process its cases faster, and one does that by discouraging applications or making an application almost an automatic thing that can be done by computer, or one earmarks early on before the crisis a group of people who have the capability, that is the knowledge base, understand the regulations, who can move during a time of emergency and augment the staff.

Those in my view are three of the greatest——

Senator DOMENICI. Let me ask you about one specific one, then I have one additional question. There is a contention that, although the regulations gave the DOE and the oil companies authority to shift supplies from one region to another during the 1979 crisis or shortage, neither was willing to employ this authority to deal with regionalized shortages. Is that a true statement?

If it is, is it serious? You did not mention it in one of the things you were trying to correct. All of us know that the shortages were not uniform in this Nation. As long as we have allocations, I don't think anyone can expect them to be uniform. But they seem to be disproportionate and there were significant areas of shortage while others had no problem.

So the regional contention does seem to make some sense to this Senator. Can you address that?

Ms. ROLLINS. Yes, I did not address that as one of the perceived problems. I suspect that is because in my view the regulations currently on the books with regard to the DOE's redirection authority is adequate. I think there will always be a quarrel after the

fact as to whether the Department used too much or not enough authority in terms of unleashing its powers.

In discussing with some representatives of the States before we finalized this proposal, they suggested that we had been rather "chicken" in failing to use that authority and my view is that that will always be a question of the personalities of the people in charge, just in terms of how one perceives a shortage and what is the appropriate action.

There is also the authority for refiners to correct imbalances. Further, within a State, a Governor can request a refiner to redirect product from one area to another. I cannot comment on last summer's experience because quite frankly, I was not in the Department. I would rather choose to comment on several isolated shortages that we experienced this winter, notably in Florida and California.

I would like to say that that redirection authority and the request of the Department of Energy was used to relieve two shortages that I am aware of. So I think the authority is there but it's just a question of determining when it must be used.

I doubt that anyone will agree with what the Department does.

Senator BUMPERS. We have a whole host of witnesses here. Any of us who have additional questions of Ms. Rollins can submit them in writing.

I have one for Senator Bradley which I will submit to you, Ms. Rollins, dealing with an energetic, aggressive dealer who succeeds over a lethargic, lazy dealer and wants to increase his allocation. Thank you very much for being with us this morning

Ms. ROLLINS. Thank you.

Senator BUMPERS. I will rearrange the schedule of witnesses this morning slightly. We have a panel scheduled to be last but I will ask the panel to come forward now since they represent the major oil companies and refiners. The panel is Mr. Anthony Prud'homme, manager, marketing services, Atlantic Richfield Co., Los Angeles; Mr. W. J. Bittles, vice president, oil products, retail sales, Shell Oil Co., Houston, Tex.; and Mr. Donald L. Mulit, vice president, marketing, Chevron, USA, Inc., San Francisco.

Welcome, gentlemen. Let me say that I have requested these witnesses from Shell, Chevron, and Arco to appear as a panel for the purpose of saving time and the record should reflect that the statements and comments or answers of one witness should in no way be considered that of any of the other witnesses unless he states that he wishes to be identified with the answer of another witness.

Would each of you gentlemen identify yourself for the subcommittee and then proceed however you choose?

Mr. PRUD'HOMME. I am Anthony Prud'homme, manager, marketing services, Atlantic Richfield.

Mr. BITTLES. I am Bill Bittles, vice president, retail sales, Shell Oil Co.

Mr. MULIT. I am Don Mulit, vice president, marketing, Chevron, USA.

Senator BUMPERS. Gentlemen, pull the microphones as close as you can get them and still be comfortable. The sound system here is deplorable.

Why don't we just go from my left to the right and Mr. Prud'homme, you start off.

STATEMENT OF ANTHONY PRUD'HOMME, MANAGER, MARKETING SERVICES, ARCO PETROLEUM PRODUCTS CO., DIVISION OF ATLANTIC RICHFIELD CO., LOS ANGELES, CALIF.

Mr. PRUD'HOMME. Mr. Chairman, gentlemen. I am Anthony Prud'homme, manager, marketing services, Atlantic Richfield Co. We are pleased to participate in these hearings and to present our views on the issues raised. We believe there are a number of problems and inequities associated with the allocation regulation and we welcome this opportunity to express our views and recommendations.

I believe you have copies of my complete testimony which I would request be submitted for the record. I would like to summarize.

Senator BUMPERS. I hope you will summarize.

Mr. PRUD'HOMME. I will summarize and leave some time for questions. The essential fact is that DOE regulations have changed the face of retail marketing in this country. They have led to astronomical growth in the jobber class of trade. They have seriously jeopardized the competitive position of independent service station dealers and have made it virtually impossible to adjust to changes in demand reflecting demographic shifts, changes in the public's buying patterns or temporary surges or shortages affecting relatively limited geographical areas.

They have introduced a rigid pricing structure which reduces competition among classes of trade, geographic areas, and methods of retail marketing. They have imposed large and inflexible supply allocations on refiners which inhibit their ability to manage inventories and provide an optimum volume of gasoline to their reseller customers.

They have all but eliminated incentives to develop new marketing techniques to meet new emerging public preferences. They have insulated the inefficient or obsolete operator from the exigencies of competition. Above all, they have imposed an enormous cost burden on the public which results in higher prices but no increase in the supplies or benefits.

The four questions the subcommittee has asked I would like to address briefly in terms. First, how are allocations established for new dealers? As you heard from Ms. Rollins, they fill out a form, ERA-99, and they must obtain a willing supplier and we, Atlantic Richfield Co., because of our limited availability of product, we have an allocation fraction below one since May of last year and we have not been a willing supplier in any single case.

Nevertheless, DOE rules allow jobbers supplied by us and others to act as willing suppliers and once they agree to be a willing supplier they can automatically upward adjust their entitlement with us. Since March 1, 1979, DOE has served orders or proposed orders on us covering 439 new service stations and 423 million additional gallons to be supplied by jobbers in spite of our unwillingness to be the prime supplier.

Senator METZENBAUM. 423 million a month?

Mr. PRUD'HOMME. No, Senator, that's an annual figure. Given these rules, new dealers go to jobbers automatically, get higher entitlements from their suppliers and this privilege is not available to any other class of trade. Moreover, all volumes diverted to jobbers under these rules come directly out of the pool of product which otherwise would have gone to all other customers of the prime supplier.

While jobbers grow in this manner, all other gasoline customers suffer volume losses.

As to the second question, what happens to the allocations of stations that have closed, the stations supplied by a refiner when it closes, the volume goes back into the refiner's national pool and is redistributed to that refiner's other customers.

When a station supplied by a jobber closes, essentially nothing happens. The jobber keeps the volume and unless he is on an allocation fraction below 1, he can virtually do with that volume what he will. It is not even necessary——

Senator BUMPERS. Even if he owns stations of his own, even if he has stations he owns, he can do that?

Mr. PRUD'HOMME. As long as his allocation fraction is above 1, there are surplus allocations and other regulations that give a good deal of flexibility as to how that volume is distributed If he is below 1, he is subject to the same rules we are. But it is not necessary for a jobber to use volumes from a closed station to supply new stations.

A jobber can close a station and keep the volume and simultaneously open a new station and automatically upward adjust to his prime supplier.

As to the third question, why are dealers receiving less than their full base period allocation? One reason, of course, is that the base period allocations are higher than were actual base period volumes. The base period is November 1977 through October 1978 and volumes purchased during that time have been adjusted upward by the unusual growth provision, so-called 10-percent rule, the exigent circumstance provision.

In addition, State set-aside volumes go to dealers and as a result many dealers are receiving volumes at least equivalent to purchases made during the base period in spite of allocation fractions below 1.

Second, in speaking just for Atlantic Richfield, our gasoline inventory position is expected to be very tight in the late summer and early fall in spite of ample inventories currently. We expect to reach minimum operable inventories in late August and stay there for 2 or 3 months.

Therefore, we do not, although we have ample inventories currently, we have to exercise some degree of caution as to how they are distributed.

Third, DOE rules add elements of uncertainty and inflexibility to the system which require particularly careful inventory management. There is the overhang of proposed new station assignments to contend with and there can be unpredictable demands from customers who have allocation entitlements, although they are not buying currently.

Under these circumstances, it is not surprising that refiners generally act with an abundance of caution in making their monthly volume commitments.

The fourth question addressed to us was: What problems are the current regulations creating? My written text covers these problems in detail and let me just list them.

For dealers the problems are, dealers cannot get upward adjustments to their entitlements. Jobbers who compete with dealers are able to open new stations and get new and large entitlements. Jobbers who close stations and keep the volume and put it through other existing sites offer very severe competition for dealers.

Jobbers have large margins and relatively low prices compared to dealers with a large margin and a favorable bias. For jobbers, the regulations are too complex and difficult and the cost of administering the rules is prohibitive. Jobbers are not free to shop for low cost suppliers.

In spite of the above, many jobbers have benefited directly from the rules. They feel their preferential treatment may end with controls. For refiners, the rules have eroded the retail marketing base for refiners. In 1972 when all this began, sales to jobbers were 35 percent and sales to retail outlets 56 percent.

Currently, sales to jobbers account for 48 percent of volume and sales to retail outlets 47 percent, a complete reversal of the normal situation. Price competitiveness has been severely restricted and this affects class of trade differentials, geographic differentials, and refiner-operated stations.

Supplier/purchaser relationships have been severely disrupted. We have customers we would not normally have and we don't have customers we normally would have. Under certain circumstances, spot customers become permanent obligations. State energy officers with their 5-percent State set-aside volumes now rank as significant suppliers in many States and they rank about eighth in overall market share.

Those are State energy offices. The fact that State set-aside volumes are withheld from normal distribution channels until late in the month frustrates all efforts to plan and conduct business in a normal fashion. Forward planning at best is difficult, anomalies built-in or perpetuated by DOE will be increasingly time-consuming and difficult to eliminate.

Cost of administering the regulations is enormous and entirely without benefit from an economic or energy standpoint.

Four, the public. Product cannot be shifted from low-demand and low-growth areas to high-demand and high-growth areas. Enormous price differentials among individual stations can result in lines when product is in fact in ample supply. The substantial cost of administering the regulations mean higher prices to the public but no additional supplies.

There is reduced competition since even the most successful dealers normally cannot get anymore product in their base period entitlement. Higher price or other marginal operators are guaranteed supplies which normally would flow to the more competitive dealers.

Incentives to develop new marketing methods and techniques to meet new customer demands are severely restricted. In view of the

number and variety of these problems, we are not prepared to propose quick fixes or patches on patches as a way of reducing the burden which DOE controls place on the American public.

While many adjustments could be made which would be beneficial, we believe the present body of rules and regulations represent a true Gordian knot which can never be untangled one thread at a time. The only solution with any hope of success, and the only possible solution, is Alexander's solution, cut the knot with a sharp sword and eliminate the current batch of allocation and price rules altogether.

As adjuncts to this suggestion, let me make three other comments.

One, when supplies are ample to meet demand, the market directed system we have in this country works and works well and has never been seriously challenged by any other system or means in terms of providing quality goods and services, convenience, customer satisfaction, and low prices.

When supplies are not ample to meet demands, some other system or some adjustment to the market system must be instituted. There is no argument about this.

In the meantime, the efforts of Government and industry alike should be directed toward increasing supplies and reducing demand, not the reverse. The sooner supply and demand can be brought into balance, the sooner the market system can be left to work in its most efficient and effective manner.

What I am really suggesting is the following:

One, the real problem we should be considering is the imbalance in supply and demand and what can be done to alleviate it, not whether current regulations are good, bad, or indifferent. In fact, current indications are that supply and demand are in at least temporary balance today. I hope they stay that way. I hope as much time and effort are spent in trying to keep them that way as in trying to rewrite or extend the regulations.

Two, in times of real shortage, Government intervention in the system is probably unavoidable. We may not like it, we do not like it, but few would seriously argue that Government has no role whatsoever to play when actual shortages of essential commodities occur.

Therefore, the problem is not whether Government should intervene, but when and how. In this connection, I commend to your attention two papers produced by the staff of the California Energy Commission. One entitled, "Toward a Theory of California's Gasoline Shortages" is by far the best analysis we have seen of events leading up to the shortages which began in California in May 1979.

The second report, entitled, "Toward a California Gasoline Shortage Emergency Plan," is again head and shoulders above any other work we have seen relating to plans for dealing with possible shortages in the future.

Neither paper is perfect and we do not endorse all conclusions. Nevertheless, good and serious work has been done and it deserves appropriate attention. These papers could well form the basis for some quite sensible national programs relating to potential future supply/demand imbalances.

Existing allocation and price rules are bad. They are inefficient, ineffective, and inequitable in addition to being enormously expensive to administer. They should be removed in their entirety as soon as possible.

Just as importantly, however, new plans and programs must be developed for dealing with possible future emergencies. In this connection, it will be far more productive, in my estimation, to start over from scratch than it will be to try to unravel the current tangled ball of regulations.

In this regard, any request for advice or assistance from my company on such a project I am sure would be met with a very positive response.

Thank you for providing this opportunity for us to express our views. I would be happy to try to respond to any questions you may have.

[The prepared statement of Mr. Prud'homme follows:]

STATEMENT BY : A. PRUD'HOMME
MANAGER, MARKETING SERVICES
ARCO PETROLEUM PRODUCTS COMPANY
DIVISION OF ATLANTIC RICHFIELD COMPANY
LOS ANGELES, CALIFORNIA

BEFORE THE : SUBCOMMITTEE ON ENERGY REGULATION
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
WASHINGTON, D. C.
JUNE 9, 1980

SUBJECT : FEDERAL GASOLINE ALLOCATION PROCESS

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ATTACHMENTS:

1. DOE ERA-99 Form "Request for Assignment of a Supplier or Adjustment of Base Period Supply Volume
2. Energy Hotline Newsletter, December, 1979

Good morning. My name is Anthony Prud'homme. I am Manager, Marketing Services for Atlantic Richfield Company. Atlantic Richfield is pleased to participate in these hearings and to present its views on issues raised by the Committee pertaining to the impact of DOE allocation regulations upon the petroleum marketplace. Atlantic Richfield believes there are a number of problems and inequities associated with these regulations. We welcome this opportunity to express our views and recommendations.

I should like to address the four questions posed by the Committee in order.

I. HOW ARE ALLOCATIONS ESTABLISHED FOR NEW DEALERS AND HOW DOES THE MAGNITUDE OF THESE ALLOCATIONS COMPARE TO THAT FOR EXISTING DEALERS?

A. The new station problem

At the outset, it should be noted that Atlantic Richfield has not willingly taken on any new customers, including service stations, for well over a year. From March, 1979 thru May, 1980 we have had to implement allocation fractions of less than 1.0 on gasoline supplies. Under the circumstances, any supply to new customers simply means less gasoline available to existing customers. As long as gasoline supplies are short, as evidenced by allocation fractions in the industry of less than 1.0, we believe that granting entitlements to new retail outlets is unnecessary and unfair to existing dealers.

Nevertheless, we have been forced by DOE to supply many new service stations. During the past year, Atlantic Richfield has received hundreds of notifications of assignments and proposed assignments for new stations representing hundreds of millions of gallons. This is a serious and growing problem for us, and I hope the members of this Committee will support our efforts to solve it.

B. Procedures

DOE procedures to obtain an allocation for a new service station are relatively simple. The applicant completes an ERA-99 Form -- "Request for Assignment of a Supplier or Adjustment of

Base Period Supply Volume". He must justify the volumes requested for the new station. DOE procedures generally call for the applicant to list two or three existing competitive service stations in the area which the applicant deems to be most comparable to his new facility. The applicant submits the estimated volumes that the comparable stations have been selling, and DOE utilizes these volumes as a guide in assigning a specific allocation volume to the new facility.

The applicant must also try to find a "willing supplier". The supplier indicates approval to supply in Section 12g of the ERA-99 form. We have attached a copy of the ERA-99 form to our testimony.

After completing the form and obtaining a willing supplier, the applicant submits the package to the DOE Regional Office which has jurisdiction for the station location. It has been our experience that virtually all of these applications are approved and usually for the volumes requested by the applicant. Our experience also reflects an absolute lack of investigation or scrutiny of the applications. For example, we received an assignment to supply 600,000 gallons per year to a vacant lot. In other cases, the comparable outlets have been separated by 50 to 75 miles and only comparable in that both sell gasoline. As part of the process, DOE orders the willing supplier via an Assignment Order to provide the approved allocation.

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C. How DOE administers the program

Two factors influence DOE approval of allocations and assignment of suppliers for new stations. First of all, current DOE regulations favor the assignment of volumes for new stations. 1/ These regulations were written in a time of gasoline surplus and are not appropriate during periods of product tightness and lowered allocation fractions.

Secondly, the DOE Regional Offices do not have the necessary staff to investigate whether the requested volumes are appropriate or even whether a new service station is needed in the trading area. As a result, most applications receive a rubber stamp approval and usually at the volumes requested by the applicant.

D. How the program actually works

1. Willing suppliers

In the hundreds of new station assignments and proposed assignments with which we have been involved, Atlantic Richfield has not been the willing supplier in any single case. Rather, as permitted under the rules, jobbers, whose only source of supply may be Atlantic Richfield, advise DOE that they are willing to provide gasoline to new retail outlets.

1/ In their Guidelines for Evaluation of Applications for Assignment of Supplier and Base Period Use to New Gasoline Retail Sales Outlets dated 11/5/79, DOE (formerly FEA) states as follows, "Thus, in the absence of other countervailing considerations, FEA should start with a strong but rebuttable presumption in favor of assigning a supplier/purchaser relationship for a proposed new retail sales outlet". (Emphasis added.)

Once DOE approves such an application, the jobber can automatically upward certify to Atlantic Richfield and demand the volume represented in the DOE assignment order.

While Atlantic Richfield, the so-called "prime" supplier in this example, can (and we do) protest and appeal the assignment, our pleas almost invariably fall on deaf DOE ears. Out of some 439 assignments and proposed assignments received, only 13 have been cancelled or rescinded as of May 31, 1980.

2. Built-in incentives

Why has there been such a proliferation of new stations over the past year? With product tight and with retail margins as high as 16.1¢ per gallon, there are strong economic incentives to open new stations. Our experience has been that the majority of the new outlets are not "ground up" newly constructed stations. Most of the new outlets are either reopened stations, which were formerly closed, generally for economic reasons, or they are other types of stores which have installed gasoline retailing equipment for the first time.

The present regulations greatly favor jobbers and have led to their astronomical growth during the era of the regulations. Between 1972 and 1979, industry sales of gasoline to

jobbers increased by 20 billion gallons while sales to all other classes of trade combined decreased by 2 billion gallons. A jobber has everything to gain and nothing to lose by signing on as a willing supplier to a new station since the incremental volume does not come from his existing allocable supply, but is instead drawn from the refiner's pool of product -- to the detriment of all of the refiner's other customers.

3. Abuses

The magnitude of assignment orders and proposed assignment orders that Atlantic Richfield has experienced for new stations to be supplied by jobbers has been truly staggering. Between March 1, 1979, and May 31, 1980, DOE notified Atlantic Richfield that it may be called upon to supply 439 new stations representing some 423 million gallons annually. Despite our strenuous objections, DOE continues to process and flood us with these applications.

Many of the assignments are for unreasonably high volumes, and there is widespread abuse of the system. A few examples should be noted:

a. In the Fall of last year, one facility located in an isolated rural area was granted an allocation of 1,072,000 gallons annually.

b. A liquor store with three pumps in front of the building was granted 1,050,000 gallons a year.

c. A reopened older station in a small community of under 50,000 population, which already had approximately 20 stations, was granted an allocation of 2,990,000 gallons.

d. A new truck stop in an industrial area was given 2,250,000 gallons by DOE.

These huge volumes may be contrasted with a recent Lundberg Survey based on statistics for the first nine months of 1979, which indicated the average, major company lessee dealer in the United States was selling approximately 555,000 gallons a year.

Attached to this testimony is a copy of an Energy Hotline Newsletter, which was sent to all our dealers last December, which shows pictures of some of these stations and provides further details.

4. Deception and possible fraud

A number of the cases we have encountered involve at least deception and perhaps something more serious. Certain applicants select for comparables the highest-volume service stations they can find. Some comparables submitted are not even in the immediate trading area of the new station.

In extreme cases, we believe outright fraud exists. Upward adjustment certifications have been received from individual jobbers who claim that particular stations are open and operating. When Atlantic Richfield personnel have investigated the sites, they have discovered vacant lots or facilities not capable of retailing gasoline.

a. Three-party deals

We have also encountered abuse in another area of the allocation program. These cases involve so-called "three-party arrangements". In such situations, Jobber "A" agrees to relinquish his allocation responsibility for one or more stations to Jobber "B". Jobber "B" agrees to accept the stations as new customers. Paperwork is submitted to DOE, and the reassignment is approved. As indicated earlier, once DOE approves, the jobber accepting the stations can automatically upward adjust to his prime supplier for the volume in the reassignment order. But, and this is the critical point, the relinquishing jobber does not have to downward adjust his allocation for the stations he is no longer supplying. So, Jobber "B" gets more volume, while Jobber "A" keeps what he had to begin with. The result is a "double dip" in allocation, all according to the rules.

One of the worst of these three-party cases we have uncovered involved a number of stations reassigned from a competitive jobber to a jobber supplied by ARCO. Our investigation revealed that the stations never were actually transferred to the ARCO jobber. The relinquishing jobber continued to supply the stations. The ARCO jobber sold the additional volume he received from ARCO to the competitive jobber, who was supposed to have terminated his supply arrangements with the stations.

With such cases occurring and known to DOE, we were extremely distressed when DOE announced earlier this month that they were shelving their downward adjustment proposal. This proposal, while not perfect, would at least have required the relinquishing jobber to downward adjust his entitlement for lost customers, thereby eliminating some of the more flagrant abuses of the system.

E. Problems

1. Unfair treatment of existing dealers

We have filed appeals on all of these orders, where justification for appeal exists, but our viewpoint has been largely ignored by DOE.

2. Erosion of retail sales base

The impact of the present regulatory environment has been a steady erosion of Atlantic Richfield's retail marketing base with jobbers obtaining an ever-increasing share of our gasoline sales. The following statistics illustrate this trend:

	Atlantic Richfield Share of Gasoline Sales	
	1972	1979
Dealers	63%	49%
Jobbers	28	49
Commercial	9	2
	100%	100%

The 14% drop in dealer business and the 21% increase in jobber business represents a very significant erosion of our retail base, which is detrimental to our dealer organization as well as to ourselves.

Industry sales demonstrate a similar trend in favor of jobbers. Based on information obtained from DOE, sales of gasoline by class of trade for comparable periods are as follows:

10

(Amounts in billions of gallons)	1972 Vol.	1972 %	1979 Vol.	1979 %
Refiner-operated S/S	8.2	8.2	13.7	12.0
Other refiner-supplied S/S	47.2	47.3	39.7	34.7
Sales to jobbers	34.9	35.0	55.0	48.1
Bulk purchasers	9.5	9.5	5.9	5.2
TOTAL	99.8	100.0	114.3	100.0

While there certainly has been an increase in volumes sold through refiner-operated service stations, and while there certainly has been a decrease in volumes sold through independently-operated service stations, the most significant change by far has been the enormous increase in sales through jobbers and the dominant position they have gained in gasoline marketing. To blame the increase in refiner-operated stations for the reduction in dealer volumes, as some seem to do, is to totally ignore the single most significant trend in the whole industry, and that is the growth of jobber volumes.

To be specific, during 1979, refiner sales to jobbers were 1.6 billion gallons more than sales to service stations; completely reversing the 1972 situation when refiner sales to jobbers were 20.5 billion gallons less than sales to service stations. This is the first time, to our knowledge, that sales to jobbers ever exceeded sales to service stations.

In 1972, jobbers accounted for 35% of the total market compared with 56% for directly supplied service stations. By 1979, these percentages were 48% for jobbers and 47% for directly supplied service stations, an increase of 13% for jobbers and a loss of 9% for dealers.

In other words, while refiners have increased the proportion of gasoline sold to directly operated service stations by 4% (from 8% to 12% of total), this change has been dwarfed almost to insignificance by the increase in sales to jobbers of 13% (from 35% to 48% of total). Much of the latter change has been caused by DOE regulations, including the favorable bias in granting assignments for new service stations, which I have been discussing.

3. Adds to uncertainty of volume availabilities

The number of proposed assignments represents an ever-changing potential obligation on ARCO which we must be concerned about when setting our allocation fraction. With an overhang of several hundred million gallons, prudent inventory management dictates that we operate extremely cautiously in terms of allowing product inventories to dip toward minimum levels. This clearly increases the risk to us of committing all available volumes to existing customers during periods of short supply.

4. Anti-competitive

The present regulations, which include a bias toward granting assignments to new service stations, are unfair to existing dealers from an economic and competitive standpoint. Many existing dealers have invested large sums of money and time to build their business and they are restricted to an historical volume, which has no provision for growth. Contrast that situation with one where a brand new dealer reopens a closed station (with no current customers) and is granted an allocation in the 2-3 million gallon range. That new dealer has a formidable competitive advantage versus the existing dealers in his trading area.

5. Higher prices or lower fractions

Increased supply obligations represented by new station assignments may mean higher prices for existing customers if it becomes necessary to purchase incremental volumes of crude oil or finished products to meet their needs as well as the demands of new stations. The alternative would be to not purchase additional raw materials and possibly have a lower allocation fraction for everyone.

6. Geographic imbalances

New station assignments can cause geographic imbalances. If supplies tighten up again, those areas where the assignments have predominated would be helped. Other areas would be hurt. Many of the assignments we have received have gone into markets which did not experience the lines of last year.

F. Solutions

Our recommendations to solve the new station assignment problem are as follows:

1. Impose a moratorium on "new" retail outlets as long as refiners have allocation fractions less than 1.0, unless unusual circumstances exist such as a new freeway being constructed.

2. If demand does exist for more gasoline in a community due to such circumstances as closed retail outlets, allow an upward adjustment for existing retail outlets serving that community.

3. Under no circumstances should adjustments be granted to intermediate suppliers (jobbers) when their allocation fractions are at or above 1.0 or when the allocation fraction of their prime supplier is below 1.0.

The second question raised by this Committee is:

II. WHAT HAPPENS TO THE ALLOCATIONS OF STATIONS THAT HAVE CLOSED?

A. Refiners

From the standpoint of a refiner, volumes representing allocations for closed stations go back into the refiner's national pool of product and are redistributed to all customers who have an allocation entitlement with that refiner.

Jobbers share in these returned volumes as do all other classes of trade. (A suggestion has been made that returned volumes should be redistributed entirely within the class of trade from which they originated. This makes a great deal of sense and should be pursued by DOE at its earliest opportunity.)

B. Jobbers

The situation with jobbers closing service stations is quite different. There is no downward adjustment provision in the regulations for jobbers. Jobbers can keep the volume represented by closed stations. Unfortunately, this is one of the more blatant inequities in the allocation regulations. Jobbers have absolutely no downside exposure to their allocation. They can close stations or lose stations to competitors and not have to report a decrease in their allocation to their supplier.

Furthermore, there is a tremendous opportunity for jobbers to increase their allocation entitlements from refiners by obtaining DOE assignments for new stations or approval for switches of stations among jobbers (three-party deals).

The result of such regulations over the past several years has been a dramatic shift in refiners' sales of gasoline toward jobbers, as was indicated in the statistics outlined earlier in this testimony. Where this volume eventually ends up is anybody's guess, but, during shortages, it commands very attractive market prices.

III. The third question is: WHY ARE DEALERS RECEIVING LESS THAN THEIR FULL BASE PERIOD ALLOCATION, IF SUPPLIES OF GASOLINE ARE GENERALLY PLENTIFUL?

A. Current supplies should be adequate

First of all, an analysis of current demand/supply factors indicates to us that there should be adequate supplies of gasoline available this summer.

Gasoline demand for the first four months of this year is down from the same period a year ago, about 8.5%. This decrease follows the trend that started in 1979, where we ended the year with a decrease in gasoline usage of about 5%. These statistics are especially encouraging when it is considered that just prior to the start of the gasoline lines that occurred in California last year, demand was increasing on the West Coast at a rate of about 5%. So, the growth in demand has been completely reversed.

There is no doubt that many American motorists are engaged in conservation efforts. Much of that response obviously is in reaction to higher prices.

At the same time, gasoline supplies have significantly increased. As of May 23, 1980, industry stocks on a national basis reached a level of 264 million barrels, which is 18% higher than they were at the same time last year. ARCO's inventory position is better than that of the industry. Our stocks are 31% higher than last year. We continue to run our four refineries at the same high rate

of utilization as we did last year when we ran at 96% of capacity versus an industry rate of 85%.

B. Allocation fractions are being increased

As a result of an improved supply/demand balance, allocation fractions are being increased throughout the industry. We compared the allocation fractions for thirteen major refiners for April, 1980, versus March, 1980, as secured from published sources and found that seven refiners had raised their fractions in April over the level they maintained in March. Atlantic Richfield was one of those companies, having increased to 90% from 85%. We continued the 90% fraction for May and have announced a 100% fraction for June.

C. Base period entitlements are higher than base period volumes

It is important to note that allocation fractions are not only affected by available supply but also by a refiner's base period obligations. The current base period is November, 1977, through October, 1978, as adjusted upward by DOE regulations.

Atlantic Richfield recently analyzed its base period obligations and found that those obligations are some 16% higher than the actual purchases made by our customers during the base period. This results from a series of DOE adjustments to base period volumes, including new station assignments, unusual growth adjustments (10% rule) and the exigent circumstance provision. It also includes the state set-aside obligation of 5%.

The point is that, even though fractions below 1.0 are in force, customers may actually be getting as much as, or more than, they received in the original base period. In our case, our allocation fraction during the first quarter of 1980 was 85%; yet, our customers received 5% more than they did during the base period (first quarter of 1978). Dealers, in many cases, appear able to obtain volumes at least equivalent to purchases made during the base period in spite of allocation fractions.

D. Prudent inventory management dictates caution

1. Refinery turnarounds

In spite of what we consider to be adequate industry supplies for the Summer driving season, our own inventory position is expected to be extremely tight in late Summer and early Fall. The protracted strike of the Oil, Chemical and Atomic Workers Union (OCAW) caused us and many other refiners to defer major refinery discretionary maintenance and upgrading projects which we originally intended to complete before the end of the second quarter of this year.

This means we shall not be able to make as much gasoline during the summer months as we had originally anticipated. With one major turnaround now underway and another scheduled for early Fall, we are attempting to build enough inventory now to avoid runouts later. At present, our estimates are that we shall make

it, but we expect to reach minimum inventories in late August and stay there for two or three months.

Again, we believe product availabilities should be adequate overall; but, in our own case at least, we have little or no margin for error. A major increase in demand or unexpected trouble with one or more refineries would force us to restrict supplies to a greater extent than now contemplated.

2. DOE controls inhibit normal supply operations

In a normal world, free of government controls, a refiner would balance his supplies with customer demands, with excess or slack being taken up by normal market mechanisms (price increases or decreases, spot market purchases or sales, actions by competitors). In today's world of allocation and price controls, this flexibility is denied to us.

Today, refiners are legally wedded to customers who purchased from them during the base period. Allocation obligations are constantly on the increase through DOE assignments. When supplies become more ample and some surplus product appears on the spot market, some customers buy little or none of their allocation entitlement from their base supplier. Yet, suppliers must always hold the product available for such customers, should they want it at a later date, since there is a continuing, legal allocation responsibility to those customers for their

base period volumes. When supplies tighten and/or competitive price relationships change, these customers flock back to their base period supplier demanding product.

The price regulations are intertwined with the allocation regulations. Some customers have very favorable prices as a result of DOE regulations which froze differentials in prices between customers as they were on May 15, 1973. Such customers are in a position to take and sell a portion of that product to customers of other refiners.

The need to hold product in readiness for those customers who may or may not wish to purchase wreaks havoc with normal inventory management. It also works to the detriment of those customers who actually would purchase more, if incremental volumes were made available to them.

E. Summary

We believe many dealers are receiving volumes currently which are at least equivalent to volumes they received during the 1978 base period. Nevertheless, because DOE has allowed base period volumes to be significantly adjusted upward, and because 1979 volumes were substantially higher than 1978 volumes, the current volumes may well be below full entitlement volumes and/or actual 1979 volumes. In view of generally lower demand, this should not adversely affect volumes available to meet this summer's demand levels.

Prudent inventory management dictates that inventory levels be kept above minimum levels to avoid actual runouts. In view of refinery turnarounds and possible unpredictable demands by customers currently dormant or to be assigned by DOE, caution will be exercised in projecting the volume of product available for sale.

Under the circumstances, and in view of no current gasoline shortages, refiners can be expected to act conservatively to preserve adequate inventory levels. Some individual dealers may complain if they feel they are being denied some volume they think they can sell; but, under DOE rules, there is very little flexibility left to meet individual needs and there is very little refiners can do about it, regardless of their own desires in the matter.

IV. The Committee's final question is:

WHAT PROBLEMS ARE THE CURRENT REGULATIONS CAUSING FOR DEALERS, JOBBERS, REFINERS AND THE PUBLIC?

Our response by category is as follows:

A. Dealers

1. Dealers who have opportunities to grow are hamstrung by the regulations. It has proven virtually impossible for an existing dealer to receive an upward adjustment to his allocation entitlement. Atlantic Richfield directly supplies over 5,000 dealers. Out of hundreds who have applied, we know of only 19 who have received an upward adjustment through the DOE exception process.

2. New stations supplied by jobbers, which are often awarded huge entitlements by DOE, reduce the volume available for existing dealers and provide formidable competition by virtue of volume entitlements alone.

3. Allocation regulations which do not include an effective downward adjustment provision allow jobbers to take gasoline from closed stations and push it through their retained units which often compete with dealers who are not able to obtain any increased volume.

4. The price regulations restrict competition and act to the detriment of independent dealers. As noted previously, the price regulations froze differentials between classes of customers on May 15, 1973. Those differentials often do not reflect the competitive and economic realities of today's petroleum marketplace. Some jobbers have unrealistic margins as compared to dealers. If they can gain ever increasing adjustments in their allocation entitlements through new station assignments, they have an unbeatable combination both from the price and allocation standpoint.

B. Jobbers

1. Jobbers quite rightly complain of difficulty in interpreting complex regulations.

2. The cost of administering regulations is high for all segments of the industry.

3. Jobbers are not free to unilaterally change suppliers under controls. Refiners who might normally be prepared to supply them are faced with overhanging obligations to other jobbers. They will be reluctant to take on new supply obligations since they can't get rid of the old ones.

4. Many jobbers fear losing their preferential treatment if controls end. They currently enjoy advantageous price differentials, a bias in favor of granting them increases in allocation and no downward adjustment provision. Recent DOE price rules allow them vastly increased margins. Shortages, enhanced by regulations, restrict competition. Many jobbers have an enormous vested interest in keeping controls on in their present form, and some of them can be expected to fight hard in support of their position. In all likelihood, this fight will take place in the political arena rather than through petitions to DOE or other such means.

C. Refiners

1. The erosion of the retail dealer marketing base of refiners has already been discussed. DOE regulations have given jobbers a larger share of refiners' gasoline sales than warranted by market or other conditions. This penalizes dealers and increases the vested interest of jobbers in continuing government controls.

2. DOE regulations inhibit the ability of a refiner to be price competitive from several standpoints which act to the detriment of his customers and the consuming public. First, refiners must maintain the same price differentials among classes of trade that existed on May 15, 1973, or suffer severe economic penalties even though competitive and economic conditions today may call for adjusting these differentials.

Second, geographic price differentials are frozen. Refiners are restricted from passing through costs to their customers that exceed more than 3¢ between PAD Districts -- regardless of economic or competitive conditions. Within each PADD, no adjustments to price differentials are allowed without consequent economic penalties.

Third, all refiner-operated stations, regardless of geographic location or local competitive conditions, must pass through exactly the same amount of increased costs since May 15, 1973, or suffer severe economic penalties. This has kept prices at refiner-operated stations below normal market levels. While some consumers might benefit, many competitive dealers have been hurt, and they have mounted a very formidable campaign to prohibit refiners from operating any stations.

To allow refiner-operated stations to compete on an equal footing in their local markets would help eliminate this unnecessary controversy.

3. The regulations force refiners to continue supplying customers with whom they would not normally have a relationship. To illustrate, a refiner might have had surplus product during the November, 1977, through October, 1978, period and might have made spot sales to non-historic customers. When DOE changed the base period, a supplier/purchaser relationship was created between the refiner and the spot-sale customers.

4. The State Set-Aside Program frustrates the ability of refiners to get product to their customers early in the month so that those customers can plan their business for the month from a volume standpoint. In June, 1979, the State Set-Aside was increased from 3% to 5%. This percentage is too high.

A recent analysis of set-aside activity by Atlantic Richfield for the first 4 months of 1980 revealed that the states were releasing to Atlantic Richfield 93% of the available set-aside. Approximately 48% of the amount released, however, was in the form of mass releases. A mass release is where a state orders a company to put a certain amount of volume back into its normal distribution system. Mass releases generally take place late in the month. The administrative requirements to handle a mass release are enormous. It is necessary to take the volume released by the state and distribute it on a proportional basis to each customer in the state who has an allocation entitlement.

If there were no State Set-Aside, refiner allocation fractions could be higher, and customers would have access to the product at the start of the month rather than at the end of the month.

5. As mentioned earlier in this testimony, refiner allocation obligations are always on the increase because DOE regulations foster upward adjustments by jobbers, but contain no effective provision for downward adjustments. This makes forward planning difficult. It hampers inventory management. It builds anomalies and vested interests into the system, which will take much time and effort to correct.

6. There is a heavy administrative burden both from the manpower and cost standpoint to administer the regulations.

D. The Public

Distortions and inequities in the petroleum marketplace created by the allocation and price regulations have negative impact on the public through restricted and inflexible product avails, higher prices and non-responsive marketing practices. Several examples are as follows:

1. Gasoline lines created by supply shortages can be exacerbated by the allocation regulations which are not responsive to the needs of high-growth areas. In an emergency situation, such as when the lines occurred in Los Angeles last year, the regulations do not provide an effective means to take product from low-demand and low-growth areas and shift it to high-demand and high-growth areas.

2. Gasoline lines can be created by price anomalies. It is difficult for the public to understand why some stations are pricing 15¢ to 20¢ below their competitors. The refiner-operated station price rule in effect prior to April 21, 1980, contributed to the confusion and lines that occurred were due to customers desiring to patronize stations with much lower prices.

3. The substantial costs to administer the allocation and price regulations, both on the part of the DOE and the industry, means higher prices to the public, but no additional supplies.

4. The allocation and price regulations foster reduced competition in the industry. Allocation regulations impede the flow of product to those customers who could utilize more product in order to promote growth. The price regulations provide unwarranted advantages to some customers and classes of trade at the expense of other customers and classes of trade. In addition, the price regulations impede the ability of refiners to be competitive from a geographic standpoint.

5. The marginal operator is helped by the regulations since he is guaranteed a supply of gasoline if he bought during the base period -- regardless of how he runs his business. For example, we have had cases during the past year of new-car dealers and garages who had ceased selling gasoline, who subsequently contacted us and demanded their allocation. Such situations were obviously a reaction to the tight supply situation and ability to make margins of up to 16.1¢ a gallon.

   The reopening, via DOE assignments, of closed service stations which had formerly failed because of lack of business is another example of the regulations subsidizing the marginal business.

   Marginal businesses drain off volume which would have gone to high-growth dealers. High-growth dealers provide the public with the most competitive prices and services in an environment free of controls.

6. Incentives to develop new marketing techniques are severely restricted under allocation and price controls, and this adversely impacts the public. The implementation of new marketing techniques requires substantial capital investment which is predicated on the ability to sell additional gasoline. The allocation controls make it impossible to get additional volume to existing service stations to support such investments.

CONCLUSION

We are not disposed at this time to propose "quick-fixes" or "patches on patches" as a way of reducing the burden which DOE controls place on the American public. While many adjustments could be made which would be beneficial, we believe the present body of rules and regulations represents a true Gordian knot which can never be untangled one thread at a time.

The only solution with any hope of success, the only possible solution, is Alexander's solution -- cut the knot with a sharp sword -- eliminate the current batch of allocation and price rules altogether.

As adjuncts to this suggestion, let me make three other comments:

1. When supplies are ample to meet demand, the market-directed system we have in this country works, works well and has never been seriously challenged by any other system or means in terms of providing quality goods and services, convenience, customer satisfaction and low prices.

2. When supplies are <u>not</u> ample to meet demands, some other system or some adjustment to the market system must be instituted. There is no argument about this.

3. In the meantime, the efforts of government and industry alike should be directed toward increasing supplies and reducing demand, not the reverse. The sooner supply and demand can be brought into balance, the sooner the market system can be left to work in its most efficient and effective manner.

What I am really suggesting is the following:

One, the real problem we should be considering is the imbalance in supply and demand and what can be done to alleviate it, not whether current regulations are good, bad or indifferent. In fact, current indications are that supply and demand <u>are</u> in at least temporary balance today. I hope they stay that way. I hope as much time and effort are spent in trying to keep them that way as in trying to rewrite or extend the regulations.

Two, in times of real shortage, government intervention in the system is probably unavoidable. We may not like it, we do not like it, but few would seriously argue that government has no role whatsoever to play when actual shortages of essential commodities occur.

Therefore, the problem is not whether Government should intervene, but when and how. In this connection, I commend to your attention two papers produced by the staff of the California Energy Commission. One entitled "Toward a Theory of California's Gasoline Shortages" is by far the best analysis we have seen of events leading up to the shortages which began in California in May, 1979.

The second report, entitled "Toward a California Gasoline Shortage Emergency Plan", is again head and shoulders above any other work we have seen relating to plans for dealing with possible shortages in the future.

Neither paper is perfect, and we do not endorse all conclusions. Nevertheless, good and serious work has been done, and it deserves appropriate attention. These papers could well form the basis for some quite sensible national programs relating to potential future supply/demand imbalances

Existing allocation and price rules are bad. They are inefficient, ineffective and inequitable in addition to being enormously expensive to administer. They should be removed in their entirety as soon as possible.

Just as importantly, however, new plans and programs must be developed for dealing with possible future emergencies. In this connection, it will be far more productive, in my estimation, to start over from scratch than it will be to try to unravel the current tangled ball of regulations.

In this regard, any request for advice or assistance from my company on such a project I am sure would be met with a very positive response.

Thank you for providing this opportunity for us to express our views. I would be happy to try to respond to any questions you may have.

ERA-99

Form Approved OMB 938-R026A

U. S. DEPARTMENT OF ENERGY
MANDATORY PETROLEUM PRODUCTS ALLOCATION PROGRAM
REQUEST FOR ASSIGNMENT OF A SUPPLIER OR ADJUSTMENT OF BASE PERIOD SUPPLY VOLUME
ERA-99

Do Not Write in this Box.
Case # _____
Received _____
Processed _____
Reply Sent _____

1. Name of Company
1a. Date: Year | Month | Day
2. Street Address
3. City
4. State
5. Zip Code
6. Employer Identification Number (Internal Revenue Service Number)
7a. Person to Contact
7b. Telephone (Include Area Code)
8. Location to which supply is delivered (If different from above - Attach additional sheets if more than one location - Complete 8a. through 8d.)
8a. Street Address - Delivery Location
8b. City
8c. State
8d. Zip Code
9a. Storage Capacity of Delivery Location (Gallons)
9b. Current Inventory of Delivery Location (Gallons)

10. Type of Product: Complete separate form for each type of fuel.
10a. ☐ 110 Propane
10b. ☐ 120 Butane
10c. ☐ 130 Propane/Butane Mix
10d. ☐ 200 Motor Gasoline
10e. ☐ 310 Kerosene
10f. ☐ 320 #2 Heating Oil
10g. ☐ 330 Diesel Fuel
10h. ☐ 340 Other Middle Distillates
10i. ☐ 410 Aviation Gasoline
10j. ☐ 420 Kerosene Jet Fuel
10k. ☐ 430 Naphtha Jet Fuel
10l. ☐ 510 #4 for Utilities
10m. ☐ 520 #5 & #6 for Utilities
10n. ☐ 530 #4 for Non-Utilities
10o. ☐ 540 #5 & #6 for Non-Utilities
10p. ☐ 550 Bunker C
10q. ☐ 560 Navy Special
10r. ☐ 570 Other Residuals
10s. ☐ 710 Lubricant 3
10t. ☐ 720 Special Naphthas
10u. ☐ 730 Solvents
10v. ☐ 740 Miscellaneous
10w. Specify Grade of Product

11. Type of Request (Please Check)
11a. ☐ Request For Assignment of Supplier
11b. ☐ Request for Assignment of Base Period Supply Volume
11c. ☐ Request for Adjustment of Base Period Supply Volume - Adjustment less than 20% *
11d. ☐ Request for Adjustment of Base Period Supply Volume - Adjustment Equal To or Greater Than 20%*
11e. ☐ Request for Assignment of Non Bonded Fuels (See Instructions)
*All adjustments must be greater than 10% for motor gasoline and 5% for all other products.

12. Name and Address of Suppliers (or Potential Suppliers if Requesting Assignment of a Supplier) - Complete 12a. through 12f. List principal supplier on the first line and others below. If more than four, provide additional sheets.

	12a. Name of Supplier	12b. Supplier Address (City, State, Zip)	12c. Brand Name of Supplier	12d. % of Base Period Supplied	12e. Person to Contact & Telephone	12f. Willing to Supply?
(1)						Yes ___ No ___
(2)						Yes ___ No ___
(3)						Yes ___ No ___
(4)						Yes ___ No ___

12g. Supplier's Decision on this request - Completed by Supplier.
Supplier Name _____ Please check appropriate box.
☐ Approved ☐ Disapproved If disapproved, indicate reasons for disapproval.

13. Product Purchased For:

_____ Resale

_____ End Use - describe briefly:

14. If there is a credit or legal problem involving your supply, briefly describe (Attach additional information if necessary).

15. Base Period Supply Volume by Month (Gallons)

15a. Base Period Year

January	May	September
February	June	October
March	July	November
April	August	December

15b. Base Period Supply Volume — Total

15c. Does this base period supply volume agree with your supplier?
Check ☐ Yes ☐ No If "No" attach copy of Base Period Supply Volume Report and briefly describe disagreement.

16. Actual purchases in the last twelve months and the percentage of the comparable base period month. (Total for all use categories in 16b.)

Month	Year	Gallons	% of Base Period	Month	Year	Gallons	% of Base Period
January	19			July	19		
February	19			August	19		
March	19			September	19		
April	19			October	19		
May	19			November	19		
June	19			December	19		

16a. Actual Purchases in the last twelve months. Total

16b. Actual purchases in the last twelve months and the percentage of the comparable base period month by use category. (Space for three use categories is provided. If more than three exist, attach additional sheets using the following format.)

(1) Use Category _____ (Indicate name) _____

Month	Year	Gallons	% of Base Period	Month	Year	Gallons	% of Base Period
January	19			July	19		
February	19			August	19		
March	19			September	19		
April	19			October	19		
May	19			November	19		
June	19			December	19		

Total

(2) Use Category _____ (Indicate name) _____

Month	Year	Gallons	% of Base Period	Month	Year	Gallons	% of Base Period
January	19			July	19		
February	19			August	19		
March	19			September	19		
April	19			October	19		
May	19			November	19		
June	19			December	19		

Total

(3) Use Category _____ (Indicate name) _____

Month	Year	Gallons	% of Base Period	Month	Year	Gallons	% of Base Period
January	19			July	19		
February	19			August	19		
March	19			September	19		
April	19			October	19		
May	19			November	19		
June	19			December	19		
					Total		

17. Requested adjusted base period supply volume and the percentage of the comparable base period month.

Month	Year	Gallons	% of Base Period	Month	Year	Gallons	% of Base Period
January	19			July	19		
February	19			August	19		
March	19			September	19		
April	19			October	19		
May	19			November	19		
June	19			December	19		
17a. Requested adjusted base period supply volume					Total		

18. Justification for volumes requested in item 17 above. Describe in detail the reasons justifying this request. (See Instructions)

19. Have you applied to the State for exceptional hardship? Check ☐ Yes ☐ No If "yes", briefly describe.

20. Have you ever filed this form with the Federal Government for the type of fuel you are presently requesting action? Check ☐ Yes (If yes give case #) ☐ No

21. Other significant factors, special requirements, or remarks (Provide additional sheets if required).

22. List titles of attached sheets.

23. Certification - I hereby certify that the above statements are true, accurate, and complete to the best of my knowledge and that any quantity requested for priority use will be used only for that use.

Signature of person completing form

Signature and title of certifying company official

24. International Air Carriers:
Additional Certification for Assignment of Non-Bonded Fuels - I hereby certify that bonded fuel suppliers are not available at any price to provide a level of fuel comparable to the average percentage of base period fuel currently supplied to other international air carriers operating into the U.S.

Signature and title of certifying company official

Title 18 USC Sec. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

ERA-99

GPO 579 O - 288-103

U. S. DEPARTMENT OF ENERGY

Request for Assignment of a Supplier
or Adjustments of Base Period Supply Volume
ERA-99

Instructions

General Instructions

1. Who Submits and Where to Submit.
   a. The following should submit this form to their current or prospective supplier:
      (1) Wholesale purchasers who do not have a supplier.
      (2) Wholesale purchasers who need to establish a base period supply volume.
      (3) Wholesale purchasers who have had unusual growth (more than 10% per year for motor gasoline and more than 5% per year for all other products) since the base period and wish to adjust their base period supply volume.
      (4) Wholesale purchasers who wish to adjust their base period supply volume to cover certified increases in volume from end users allocated on the basis of 100% of current requirements.
   b. The following should submit this form to the appropriate Regional Office of DOE:
      (1) Wholesale purchasers who wish to adjust their base period supply volume to cover certified increases in volume from end users allocated on the basis of a percentage of base period supply.
      (2) Suppliers who question the validity of this application.
      (3) Suppliers who have approved an adjustment of the base period supply volume in excess of 20%.
      (4) Wholesale purchasers who request an adjustment in the base period supply volume due to curtailment or abandonment of service of an energy source other than residual fuel oil or refined petroleum products.
   c. The following should submit this form to the DOE National Office:
      (1) International air carriers requesting allocations of non-bonded fuels.
      (2) Civil Air Carriers and Public Aviation requesting redistribution of aviation fuels.
2. Fuels Covered
   ____ 110 Propane
   ____ 120 Butane
   ____ 130 Propane/Butane
   ____ 200 Motor Gasoline
   ____ 310 Kerosene
   ____ 320 #2 Heating Oil
   ____ 330 Diesel Fuel
   ____ 340 Other Middle Distillates
   ____ 410 Aviation Gasoline
   ____ 420 Kerosene Jet Fuel
   ____ 430 Naphtha Jet Fuel
   ____ 510 #4 for Utilities
   ____ 520 #5 & #6 for Utilities
   ____ 530 #4 for Non-Utilities
   ____ 540 #5 & #6 for Non-Utilities
   ____ 550 Bunker C
   ____ 560 Navy Special
   ____ 570 Other Residuals
   ____ 710 Lubricants
   ____ 720 Special Naphthas
   ____ 730 Solvents
   ____ 740 Miscellaneous
3. General Information
   Adjustment or assignment for only one type of product can be requested on this form. If information on this form is not complete, the form will be returned to you. *Forms sent to DOE should be submitted in triplicate.*

Specific Instructions

1. Name of Company - Enter the corporate name, or the name of the entity making the request.
1a. Date - Enter the year, month and day of this request.
2. Street Address - Enter the street address of the company or individual making the request.
3. City - Enter the name of the city location of the company making the request.
4. State - Enter the name of the state location of the company making the request.
5. Zip Code - Enter the zip code of the company making the request.
6. Employer Identification Number - Enter the nine digit number that is used in all filings with the Internal Revenue Service.
7a. Person to Contact - Enter the name of the person to contact from the requesting company.
7b. Telephone - Enter the telephone number (Including area code) of the person to contact from the requesting company.
8a., 8b., 8c., & 8d. Street Address, City, State, Zip Code - Delivery Location - Enter the street address, city name, state name and zip code of the location to which the supply is to be delivered. This information should only be completed if the delivery location is different from the corporate address entered in 2., 3., & 4. above. If the delivery is to be more than one location enter the address of each location, other than that in blocks 2., 3., & 4. on separate sheet(s) and attach to this form.
9a. Storage Capacity of Delivery Location - Enter the storage capacity in gallons for each location to which the product is to be delivered.
9b. Current Inventory of Delivery Location - Enter the inventory level in gallons as of the date of this request for each location to which the product is to be delivered.
10. Type of Product - Check only one box for the type of product for which supply or supplier is being requested.
10w. Specify Grade of Product - Enter the grade of the product under request, such as Diesel #2, etc.
11. Type of Request - Check the appropriate box for the request being made.
12a. Name of Supplier - Enter the name of the supplier who is presently supplying you the product. There are four lines provided and the principal supplier should be entered on the first line. If there are more than four suppliers list on an additional sheet. If the request is for an assignment of a supplier, enter the names of potential suppliers who could provide the product to you. Rank preference of potential supplier with the highest preference on line (1).
12b. Supplier Address - Enter the city, state and zip code of the appropriate supplier.
12c. Brand Name of Supplier - Enter the brand name of supplier.
12d. % of Base Period Supplier - Enter the percentage of the annual base period volume that has been supplied by the appropriate supplier.
12e. Person to Contact & Telephone - Enter the name of the person to contact for each supplier and his telephone number including the area code.
12f. Willing to Supply? - For each supplier you have entered, indicate his willingness to supply by checking the appropriate box.
12g. Supplier's Decision on this Request - This section should be completed by the supplier. The supplier's name is entered and the appropriate box checked for approving or disapproving this request. If the request is disapproved, indicate in detail the reasons for disapproval.

13. Product Purchased For - Check the appropriate box for the type of use. If the product is for end-use rather than for resale, briefly describe how the product is used.
14. Credit or legal Problem - If there is a credit or legal problem involving your request for supply, describe the nature of the problem.
15. Base Period Supply Volume by Month - Enter for each month the gallons of product purchased during the base year.
15a. Base Period Year - Enter the base period year for which the request applies. For all products except propane, butane, and residual fuel oils the base year is 1972. For propane and butane the base period is October 1, 1972 to April 30, 1973. For residual fuel oils the base year is 1973.
15b. Total - Enter entire total of base period volume.
15c. Base Period Agree with Supplier - Check the appropriate box for agreement with the supplier's records. If the base period supply volume does not agree, attach a copy of the Base Period Supply Volume Report and briefly describe the disagreement.
16. Actual Purchases in the Last Twelve Months - Enter the gallons purchased for each month for the latest twelve complete months prior to date of this application. Enter the appropriate year, for example, may begin with March 1973 and end with February 1974. Enter the percentage of the comparable month in the base period, for example, 11790.
16a. Twelve Month Total - Enter total purchases for the last twelve months.
16b. Actual Purchases by Use Category - Enter the gallons purchased in the last twelve months summarized for each use category. Only the following use categories are applicable.:

____ Agricultural Production	____ Cargo, freight and mail hauling
____ Emergency Services	____ Utilities
____ Energy Production	____ Medical and Nursing Buildings
____ Sanitation Services	____ Civil Air Carriers
____ Telecommunications	____ General Aviation
____ Transportation Services	____ Public Aviation
____ Space Heating	____ Marine Shipping
____ Industrial and Manufacturing	____ Others

Indicate the use category name on the appropriate line. Space is provided for three use categories. If more than three are needed attach additional sheets using the same format prescribed herein. Also enter the appropriate year and the percentage of the comparable month in the base period.

17. Requested Adjusted Base Period Supply Volume - Enter for each month the gallons requested for the adjusted base period supply volume. This information should be included for all requests such as establishment of a base period supply, adjustment of a base period supply due to growth, allocation for non-bonded fuels or establishment of base period supply due to curtailment of other energy source. Also enter the appropriate year, for example, 1974. Enter the percentage of the comparable month in the base period, for example, 125% if the request is an adjustment to base period supply volume.
17a. Requested Adjusted Base Period Supply - Total - Enter the twelve month total for the requested adjusted base period supply volume.
18. Justification For Volumes Requested - Describe in detail the reasons justifying these requested volumes. Indicate the names and telephone numbers of major customers whose requirements have substantially increased or major new customers who will be supplied. Also indicate the end-use for each of these customers and the impact on customers' operations if the request is denied.

If the requested volumes are for your own end-use, give a description including facilities or equipment, major changes since the base period, usage rates and how the rates are determined. For the addition of new equipment attach certified statement concerning usage rates and operational capacity.

If requested volumes are as a consequence of curtailed access to other sources of energy, or pursuant to a plan filed in compliance with a rule or order of a Federal or State Agency, indicate the energy source denied and its BTU equivalent.

19. Applied to State for Exceptional Hardship - If you have applied to the state for an exceptional hardship for the type of product under request, check the appropriate box. If "yes", indicate the state to which application was made, date of application, reason for hardship, quantity of product requested and the resolution of the hardship.
20. Application to the Federal Government - Indicate whether you have ever requested an assignment of a supplier or an adjustment of a base period supply for the type of product under request. Check the appropriate box and enter the case number if the answer is "yes".
21. Other Significant Factors - Enter any other significant factors or remarks that are important to this request.
22. List Titles of Attached Sheets - Enter the titles of the attached sheets in this section of the form.
23. Certification - Enter the name and title of the individual designated by the company to sign the certification in the spaces provided on the form.
24. International Air Carriers Certification - For such requests, this additional certification is required by a senior company official.

Energy Hotline Newsletter

December, 1979
Volume 1 Number 4

Allocations for "New" Stations — What the DOE Is Doing to You

This "new" station was granted an allocation of 1,073,580 gallons per year by DOE on September 6, 1979.

We Need Your Help

Gasoline we want to sell to you is being diverted to "new" competitive retail outlets as ordered by the U.S. Department of Energy (DOE).

We believe in competition, in fairness and in meeting needs of the motoring public. We do *not* believe these objectives are helped during times of shortage by taking volume away from existing retailers and giving it to new ones.

The Problem Is Snowballing

Between March 1 and Dec. 10 of this year, DOE notified Atlantic Richfield Company (ARCO) that it may be called upon to supply "new" retail outlets served by distributors with *up to 250 million gallons of gasoline annually.* (This number represents the aggregate volume covered by assignments and proposed assignments. Actual deliveries may be less if the distributor had more than one base period supplier and/or if the new outlet's actual requirements are less than the assignment.)

Under today's regulations, distributors may agree to supply new stations which they or dealers have submitted to DOE requesting allocation entitlements. Once approved, distributors can automatically upward adjust their entitlements with their suppliers for such "new" accounts.

We are just one refiner out of many, but during the last ten months alone, we have received almost 300 assignments or proposed assignments covering new distributor-supplied stations. As mentioned above, the volume involved is over 250 million gallons annually.

While the regulations permitting this have been in existence for some time, it is only since the shortages which began early this year and the implementation of allocation fractions by suppliers that the problem has gotten out of hand.

Since our supplies are limited, gallons sold to new retail outlets reduce gallons available for existing ones.

Here Are Some Particulars

A liquor store with three pumps out front asked for an entitlement. Would you believe the DOE gave them *1,050,000 gallons annually?*

A truck stop on a secondary road with two gasoline pumps (4 hoses) got an entitlement for *2,250,000 gallons a year.*

A reopened, repainted station (with former bays and offices closed off) got *2,990,000 gallons.*

A relocated station near a town of 3,000 inhabitants (with one existing station in the same area doing 120,000 to 180,000 gallons a year) got an entitlement for *1,072,000 gallons.*

A small grocery store (with no pumps at the moment, and no permit to install them) didn't fare so well. It got an assignment of only 950,000 gallons.

Anyone can sell gasoline today. DOE granted this liquor store an allocation of over one million gallons a year.

A 'comparable' unit used by the liquor store. This facility is on the same street eight blocks away. Its allocation entitlement is less than 700,000 gallons a year.

Another 'comparable' used by the liquor store to justify its allocation request to DOE. The only thing 'comparable' would appear to be that they both have gasoline pumps.

What Is Going On?

Obviously, with today's high margins (up to 16.1 cents per gallon per DOE rules) and tight gasoline supplies, there are powerful incentives for anyone who can do it to open new stations, particularly new stations with high allocation entitlements.

Current DOE procedures specifically include a "presumption" that entitlements for new service stations should be granted, although an opportunity to rebut this presumption is ostensibly given to "aggrieved parties." Such aggrieved parties include competitive stations (a number of you have received aggrieved party notices) and any prime suppliers who may be called upon to supply the new station. In several DOE Regions, comments by aggrieved parties, at least from prime suppliers, seem to be totally ignored.

The regulations permitting distributors to automatically upward-adjust for new service station assignments were created during a time when gasoline was in surplus. They are not proper today. In today's climate, they provide very significant incentives to open new service stations when none, or virtually none, are needed. Some DOE Regional offices have a huge backlog of applications for new outlets (up to 1,600 in one case).

This station was awarded an allocation of almost 3,000,000 gallons. The station had been closed. The new owner enclosed the bays, put in new pumps and a kiosk, and painted the facility.

This large Shell station is located directly across the street from the 3,000,000 gallon reopened facility. There were approximately 20 stations already selling gasoline in this small community prior to DOE granting a huge allocation to the reopened facility.

In addition, we have uncovered numerous abuses of the system. For example, DOE justifies the size of an allocation to a new station on the basis of volumes purchased by comparable, competitive stations. The applicant selects the comparable stations and submits them to DOE.

Naturally, many applicants select the highest-volume stations they can find and submit them to DOE. We have documented numerous cases where the selected competitive sites are miles away from the applicant's station, are not in the same marketing area and utilize totally different marketing techniques. In other words, they are not comparable at all.

Yet the DOE often grants huge allocations based on such comparables. The DOE does not do a proper job of investigating and documenting the information submitted in the applications. DOE officials have complained that they do not have sufficient personnel to conduct an investigation of each application and must accept the applicant's claim as true.

A "new" truck stop which received a DOE gasoline allocation of 2,250,000 gallons located in an industrial area. The only two gasoline pumps are next to the building. Truck stops generally sell large quantities of diesel fuel and relatively small volumes of gasoline.

A high volume Union Oil self-serve pumper with six dual gasoline dispensers on a major thoroughfare. The truck stop applicant submitted this station to DOE as a "comparable unit" in order to justify the allocation requested.

Worst of all, ARCO has uncovered cases of what we consider to be outright fraud. These cases involve certifications that stations are open and in need of the gasoline allocation awarded by DOE.

We have investigated and found phantom stations. The sites were either empty lots or facilities that did not have gasoline-pumping equipment. These are prime examples of how in times of tight supply, distributors can obtain extra gasoline which they can then divert to unauthorized uses.

Why Are We Trying to Fight the System?

It is basically wrong.

We believe it is wrong for the DOE to grant allocations to large numbers of new or reopened stations which are opening during an environment of tight supply.

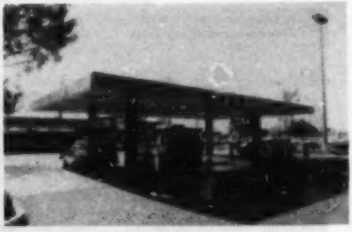
Our present policy is to not acquire new gasoline customers. However, we are virtually powerless to stop the onslaught of DOE allocations granted to new or reopened facilities assigned to some of our distributors.

There is less gasoline available for our historic customers.

In a shortage environment, we only have a limited number of gallons available to sell. DOE assignments for new stations increase our supply obligations. Larger supply obligations create downward pressure on our allocation fraction, which means less gasoline available for our existing customers than would otherwise be the case. Each historic customer gets a smaller piece of the pie because the new customer is now allocated a piece out of the same pie.

It means higher prices or lower fractions.

Faced with ever increasing "base period" obligations, ARCO has been able to maintain its present allocation fraction only by running more crude and buying gasoline refined by others. This means we have paid going market rates, such as $42 per barrel for crude ($1 per gallon on *all* products) and $1.15 per gallon for finished gasoline. By



A second "comparable" submitted by the truck stop applicant. It is a large volume, multi-pump (eight duals) operation adjacent to a major discount department store.

doing this, the *average* price of *all* our gasoline has gone up. When limited gallons are ordered by DOE to be sold to new retail outlets, all customers wind up paying the bill.

The alternative would have been to *not* buy more crude or gasoline. With added allocation entitlements, this would have resulted in a lower allocation fraction than we had, and this would have directly affected you and *all* our customers.

It creates unfair competition for existing businesses.

Many of these new stations are in the same areas where ARCO dealers market. Some are just a few blocks away.

DOE regulations make it virtually impossible for an existing ARCO dealer to get an increase in allocation.

However, distributors bringing on stream new stations appear to be assured of receiving new allocation assignments from DOE. Many of these assignments are for ridiculously large allocations, as high as 200,000 gallons or more per month. With huge allocations to move, such new outlets have a powerful weapon. They can undercut their competitors. Price and volume are an unbeatable combination.

It causes geographical imbalances.

We show below a table which demonstrates the geographical distribution of volumes represented in the assignments and notices of proposed assignment.

The 250 million gallons involved gets skewed as follows:

	ARCO 1978 Gasoline Sales Volume Distribution	Volume Distribution of DOE Assignments and Proposed Assignments	Difference
East Coast	38%	10%	– 28%
Mid-Continent	28%	33%	+ 5%
West Coast	38%	57%	+ 21%
TOTAL	**100%**	**100%**	

Some states and areas obviously benefit from these assignments, but with limited supplies available, others are hurt.

What Are We Doing About It?

We are inspecting each new site where we feel the entitlement may be unwarranted, to see if there are grounds for getting the assignment rescinded.

We are resisting all new assignments that draw volume away from our existing customers. Our legal staff is filing appeals with DOE.

Numerous meetings have been held with DOE personnel to discuss the problem. By and large, our success in obtaining relief has been limited to those cases which exhibit obvious and flagrant abuses of the system.

We have made recommendations to DOE that it change the existing assignment criteria. The recommendations include:

1. During periods of tight gasoline supplies, DOE should not grant an allocation to a new station unless there is an exceptional reason to do so.

2. Increased supply obligations represented by new stations should not be imposed on prime suppliers with an allocation fraction of less than 1.0 (that is, those who are not even in a position to supply the base entitlements of their own customers should not be required to take on new obligations).

Fraud cases have been turned over to DOE.

(Continued on back page)

Again, the "new" station shown on the cover page, which the DOE considered deserving of a million gallon allocation. This used metal building was moved to this rural site and the facility is now being remodeled.

The phantom station: This location was granted a DOE allocation of almost 800,000 gallons. After receiving certifications that the station was open and ready to sell gasoline, an Atlantic Richfield representative went to the site and took this picture.

DOE Assignments and Proposed Assignments for Service Stations to Be Supplied by Distributors March 1, 1979 through December 10, 1979

State	Number of Assignments	Annual Volume (Gals)	Number of Proposed Assignments	Annual Volume (Gals)
East Coast				
Connecticut	1	119,264	1	150,000
Delaware	—	—	3	2,091,000
Georgia	1	168,000	—	—
Maryland	—	—	2	543,000
Massachusetts	1	303,823	6	415,090
New Hampshire	4	348,000	—	—
New York	2	1,078,944	1	960,000
North Carolina	1	504,000	—	—
Pennsylvania	13	4,775,838	13	9,682,534
South Carolina	1	9,818	—	—
Virginia	3	662,426	3	1,759,408
Total	**27**	**7,970,133**	**29**	**15,601,032**
Mid-Continent				
Illinois	4	2,889,958	2	1,680,000
Indiana	2	848,868	—	—
Kentucky	1	735,000	—	—
Louisiana	17	5,455,197	—	—
Michigan	1	600,000	—	—
Ohio	3	1,665,356	1	372,000
Texas	24	9,926,312	42	58,690,000
West Virginia	1	432,401	—	—
Wisconsin	—	—	1	240,000
Total	**53**	**22,553,092**	**46**	**60,982,000**
West Coast				
Arizona	—	—	8	9,288,000
California	39	43,840,154	55	56,453,364
Hawaii	1	572,842	5	5,550,000
Nevada	—	—	2	1,380,000
Oregon	3	1,465,332	4	3,036,000
Washington	12	11,632,692	9	9,708,000
Total	**55**	**57,511,020**	**83**	**85,415,364**
Total U.S.	**135**	**88,034,245**	**158**	**161,998,396**

Grand Total Number of Assignments and Proposed Assignments 293
Grand Total Volume of Assignments and Proposed Assignments 250,032,641 gals.

What Can You Do About It?
Write, telephone or send a mailgram or night letter to your Senator and Congressional Representative.

DOE responds to Congressional inquiries above all others. Ask your senator and representative why you can't get an increased allocation at your existing site while others can get huge entitlements at brand new sites.

The addresses are as follows:

	United States
United States Senate	House of Representatives
Washington, D.C. 20510	Washington, D.C. 20515

Write, telephone or send a mailgram or night letter to your State Legislator. States are very concerned about losing volume entitlements. If they become aware that some other states are benefiting at their expense due to quirks in the regulations, they will act.

Write, telephone, or send a mailgram or night letter to DOE headquarters.

Tell Secretary Duncan of DOE what this means to you; how it affects your business. He is sensitive to the plight of the independent dealer.

Address:
Charles W. Duncan, Jr.
Secretary, Department of Energy
1000 Independence Avenue
Washington, D.C. 20545

Write, telephone or send a mailgram or night letter to your DOE Region office.

Ask them to advise you of all new proposed assignments in your market area. Respond to "aggrieved party" letters by telling them the volume and financial effects on your business.

They won't help if you just say you don't like competition. They can help if you cite facts, figures and statistics as to what will happen to you if a new site opens nearby with a large entitlement.

You, singly and together, have influence — perhaps more than you know. Use it to your own advantage.

ARCO Petroleum Products Company
Division of Atlantic Richfield Company
515 South Flower Street
Los Angeles, Ca. 90071

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Senator BUMPERS. Thank you.
Mr. Bittles.

STATEMENT OF W. J. BITTLES, JR., VICE PRESIDENT, RETAIL SALES, SHELL OIL CO., HOUSTON, TEX.

Mr. BITTLES. We have filed a paper with you and in the interest of time and what has been said, I will read a very short summary of that paper.

Since the inception of the allocation program, our testimony and comments have constantly stressed decontrol and have identified that a competitive marketplace has historically proved to be the most effective mechanism for allocation of products under all conditions except perhaps those of severe nationwide supply shortages.

The painful experiences of a misguided and unneeded allocation program continue to confront the Nation with problems and inequities that seriously affect all of us—the refiner, the distributor, the independent dealer, and the all-important consumer.

The competitive marketplace has historically reacted responsibly to shifts in gasoline demand by furnishing adequate supplies and with this growing mish-mash between history-based supply and free-functioning demand, chaos resulted when gasoline became limited in such heavy growth areas as California, Texas, Florida, and right here in Washington, D.C.

On the other hand, nongrowth urban and rural areas generally experienced sufficient and in some cases surplus supply. The allocation and price regulations continue to be the source of more problems than they can ever solve.

A decontrolled competitive marketplace works and DOE has ample evidence of that fact since other oil products have been decontrolled for sometime now.

Let me review with you Shell's experience in 1979. Shell's overall gasoline sales were down almost 10 percent as compared to 1978. All things being equal, you would expect this loss to be shared equally by jobber-supplied and company-supplied independent dealers.

However, close examination of sales data shows company-supplied independent dealers experienced a 13-percent decline in sales while a branded jobber only experienced a slight 3.7-percent decline in sales. This is a direct result of the inequities in the allocation rules.

Let's give the American consumer a fair shake and get rid of these grossly ineffective, inequitable, and costly controls over motor gasoline. They prevent supply from following demand and, due to high administrative costs are certainly inflationary.

Ironically, the controls serve no redeeming purpose for the American consumer. Eliminating the controls will not leave the consumer, intermediate suppliers, or independent dealers without protection. We believe it is reasonable to conclude that the allocation of petroleum products during times of ample and even tight supply can be formed with greater flexibility, effectiveness, efficiency, and lower costs under current contract laws, antitrust laws, Petroleum Marketing Practices Act, and the economic laws of supply and demand than it can under the mandatory petroleum regulations.

While Shell's position for immediate decontrol remains constant, we recognize that the need does exist for an effective standby allocation program which can be promptly implemented in the event that energy shortages cause a serious disruption in available supplies.

We continue to evaluate the existing standby regulations and our own circumstances in the hopes of offering constructive alternatives.

Mr. Chairman, I trust these brief remarks are responsive. I submitted a longer paper in further detail developing these various issues. We, too, would stand welcome to contribute and assist in the development of any standby regulations deemed necessary.

[The prepared statement of Mr. Bittles follows:]

STATEMENT OF W. J. BITTLES, JR., VICE PRESIDENT, RETAIL SALES, SHELL OIL CO., HOUSTON, TEX.

Mr. Chairman and members of the committee, I am Bill Bittles, Vice President, Retail Sales for Shell Oil Company.

Shell appreciates this opportunity to appear here today and provide you with our views of the Department of Energy's Motor Gasoline Allocation Program.

Since the inception of the allocation program in January, 1974, Shell has appeared at numerous Congressional, FEA and DOE hearings and meetings to address the problems and inequities of the program and to offer, when appropriate, our recommendations for possible remedies. (See Exhibit A for a schedule of hearings where Shell offered testimony and/or comments) Our testimonies and comments have consistently stressed decontrol and have identified that a competitive marketplace has historically proved to be the most effective mechanism for the allocation of products under all conditions except perhaps those of severe nationwide supply shortages.

Also, we continue to emphasize the need for a well conceived stand-by allocation program that would efficiently respond to a severe shortfall with the least amount of economic and social disruption.

Today's picture of the Federal Motor Gasoline Allocation Program is bleak. The regulatory controls continue to reflect an insensitivity to today's supply and demand picture and are riddled with a crises-generated patch work of amendments that attempt to make a stagnant and terminally ill program responsive. The painful experiences of a misguided and unneeded allocation program continue to confront the nation with problems and inequities that seriously affect all of us - the refiner, the distributor, the independent dealer and the all-important consumer.

As we all know, the Allocation Program's primary shortcomings were once again brought to light during last year's gasoline shortage. Let's take a look.

The competitive marketplace has historically reacted responsibly to shifts in gasoline demand by furnishing adequate supplies. The allocation program instilled supply mechanisms that ignored this shifting demand and, in fact, encouraged and perpetuated surplus and unneeded supplies in areas where demand was decreasing or static. Supply patterns became severely distorted with these misallocated volumes. As long as there were no shortages, the program's insensitivities, inefficiencies and inequities were not perceptible - at least not to the consumer.

With this growing mismatch between allocated supply and free-functioning demand - the allocation regulations were not adjusted and could not be amended rapidly enough to forestall some of the chaos that resulted when gasoline supply became limited in heavy growth areas of California, Texas, Florida, and right here in Washington, D.C.. On the other hand non-growth urban and rural areas generally experienced sufficient, and in some cases surplus, supply. In fact, there are indications that some of this surplus may have been resold into regions of short supply at very high prices.

The allocation and price regulations, for that matter, are now, and will continue to be, the source of more problems than they can ever solve.

It is very obvious to us that the knowledge gained from the past seven years of mandated allocation, during which our nation experienced two periods of shortfall in supply, demonstrates quite clearly that an on-going federally managed allocation program is not a solution.

A decontrolled competitive marketplace works, and DOE has ample evidence of that fact since other oil products have been decontrolled for some time now. Motor gasoline should be decontrolled unless:

- DOE, the Congress and the Administration are willing to take the responsibility for lines at many service stations if a shortfall in supplies occurs again or -

- DOE, the Congress and the Administration are willing to explain the value of continuing controls to the multitude of independent dealers who have been and continue to be arbitrarily discriminated against.

The regulatory controls, patched up as they are, will not resolve the problems. Let me be specific:

o Market distortion - a major breakdown of the Energy Regulations is attributable to the failure of the DOE to recognize and account for continuing shifts of this country's increasingly mobile population to growth areas and the resultant decline of certain rural areas and older urban areas. The resulting marketplace distortion and inequitable distribution of product during periods of short supply has been acknowledged by the DOE in a July 24, 1979 report to the President on the Activities of Oil Companies Affecting Gasoline Supplies. I quote:

"The Energy Regulations have contributed to the creation of spot shortages and long lines at service stations, because a historically based allocation process can never completely reflect current patterns of gasoline demand. The Energy Regulations freeze supplier-purchaser relationships and volume entitlements as of a particular moment in the past, in order to assure a continued flow of gasoline to all areas of the country, but this can result in excessive amounts of gasoline going to some distributors or dealers because of subsequent changes in demand patterns or in retail operations."

best copy available

As an example of this, in spring, 1979, California, Texas, and other significant growth areas, were compelled to impose upon consumers odd-even gasoline purchase requirements and other controls based on special state programs while gasoline supplies were sufficient in markets in many states and no such measures were needed.

o The inequitable treatment of allocated volumes - There are many regulatory areas of inconsistency. Let me share two of them with you: (1) Due to changed circumstances, shifting consumer demand can be met either through a new service station allocation or by increasing the allocations of existing service stations. While either approach should be equally accessible to resellers, the DOE has consistently imposed inpenetrable barriers upon existing dealers in acquiring increased allocation to meet a changing market.

Equitable distribution is even more important in times of shortage, however:

Jobbers, usually located in non-urban areas, have been able to readily apply for, and receive, additional supplies of gasoline simply by reopening a previously closed service station or by adding pumps and tanks to a local convenience store or in some cases, by building a new station.

Independent operators have also applied for and received large allocations for new locations.

Existing company-supplied independent dealers, in most cases, have been unable to even get a minor adjustment to their base period volume entitlement.

In our own case, faced with limited supplies over the recent period of shortage, we have been reluctant to expand or alter our marketing network to any significant extent, as we know supply to a new station would lower the overall availability to existing customers.

(2) Again due to changed circumstances, a particular service station may be closed. The DOE's treatment of the closed station volume varies by the type of supplier. If the station is supplied by an intermediate supplier (Jobber), that supplier retains the volume for distribution to his other outlets or for "opportunity sales." If the station is supplied by a major refiner, the closed station volume is withdrawn from the market - and returned to the refiner's national pool for pro-rata distribution to all customers nationwide. In this case, the volume is, in effect, withdrawn from the local market.

Unfortunately, the action taken by DOE to correct this example of supply imbalance has been less than positive. In November of 1979, DOE started a rulemaking proceeding that would require the intermediate supplier (Jobber)to adjust downward his allocation entitlement to reflect his lost account volumes or, alternately, to allow major refiners to retain closed station volumes in a market where it is needed. Hearings were conducted during which DOE was made aware of the supply imbalance.

In April of this year, some 5 months later, DOE advises that it is not in a position to issue a rulemaking requiring downward certification and that further study is underway. We have no guarantee that any action will be taken and therefore anticipate supply shortages in the growth areas should we have another shortfall.

We can't believe that the DOE wants to divide service station dealers into two clearly unequal classes. Such action would be contrary to the underlying principles found in their own regulations. It could, also, in the long run, deal a fatal blow to many independent dealers -- a large group of small businessmen. (See Exhibit B - DOE's Report - Percent of Motor Gasoline Shift By Class from 1972-1979).

Let me review with you Shell's experience during 1978 and 1979. In 1979, Shell's overall gasoline sales were down almost 10 percent compared to 1978. All things being equal, you would expect this loss to be shared equally by jobber and company-supplied independent dealer. However, close examination of sales data shows company-supplied independent dealers experienced a 13 percent decline in sales while the branded jobber only experienced a slight 3.7 percent decline in sales. This is a direct result of the inequities in the allocation rules.

Shell's position has not been addressed just to Congressional and DOE hearings. We have gone to our customers, our independent directly supplied dealers and our intermediate suppliers (jobbers) and told our story.

Apparently, the majority of them agree with us. They've talked to their Senators and Representatives and emphasized the inequities and hardships that the allocation program has forced on their business and they shudder at the dreary prospect of lines returning to their stations.

Let's give the American consumer a fair shake and get rid of these grossly ineffective and costly controls over motor gasoline. They prevent supply from following demand, and due to high administrative costs, they are inflationary.

Ironically, the controls serve no redeeming purpose for the American consumer. Eliminating the regulations will not leave the consumer, intermediate suppliers, or independent dealers without protection.

We realize it is difficult to quantify the dislocation, inefficiencies, loss of utility, and costs of governmental bureaucracy, all of which ultimately affects the consumer's pocketbook. However, we believe it is reasonable to conclude that the allocation of petroleum products during times of ample and even tight supply can be performed with greater flexibility, effectiveness, efficiency, and lower costs under current contract laws, antitrust laws, the Petroleum Marketing Practices Act, and the economic laws of supply and demand than it can under the mandatory petroleum regulations.

It follows, then, that there is no present need to have regulations to allocate gasoline. Their continued use will result in continuing inequities and distortions in the marketplace.

While Shell's position for immediate decontrol remains constant, we recognize that a need does exist for an effective standby allocation program that is kept current and can be promptly implemented in the event that energy shortages cause a serious disruption in available supplies.

It is paramount that a well conceived action plan be ready to soften the disruption. Shell strongly recommends that the government rid itself of the unnecessary and burdensome tasks of allocating a product in ample and even tight supply situations.

In summary, I urge you to examine the current conditions and to act realistically. I submit that when there is not a severe shortage of gasoline, such as now, mandatory regulations for the allocation and price of gasoline serve absolutely no purpose and should be removed. All that is needed is a program which could be quickly implemented at the time of a severe gasoline shortage.

Mr. Chairman, I trust these remarks are responsive. For your further review, explicit answers to the four questions posed in your letter of April 16, 1980 are included as Exhibit C.

It's truly time for a change. Thank you.

Final

June 6, 1980

EXHIBIT A

LISTING OF DOE PROPOSED OR EMERGENCY RULEMAKING COMMENTS/PUBLIC HEARING SCHEDULES CONCERNING ALLOCATION

	Rulemaking Subject	FRA Note Reference	Comments Submitted
			1976
1.	Decontrol No. 2 Oil & Certain Middle Distillates	PR-76-28	5/10
2.	Special Rule No. 7 for Marine Bunkers--Extension Beyond 6/1/76	NR-76-31	5/17
3.	Energy Conservation Contingency Plans	PR-76-36	6/25
4.	Gasoline and Diesel Fuel Rationing Contingency Plan	PR-76-37	7/2
5.	Reduce Shell's Propane Allocation Subsystems from Eight to Three	PR-76-42	8/20
6.	Special Rule No. 3--Aug. '76 Thru March '77 State Set-aside Program for Middle Distillates	PR-76-43	7/21
7.	Revised Fixed Base Operators' Aviation Fuel Allocation Levels	PR-76-61	10/26
			1977
8.	Adjustments to 1972 Base Period for Motor Gasoline Allocation	PR-77-20	Oral Statements--Washington, Boston & San Francisco
9.	Motor Gasoline Decontrol (FERC Docket No. EA 78-1)	PR-77-43A	11/21
10.	Allocation Regulations for Propane and NGL's	PR-77-46	9/7
11.	Middle Distillate Set-Aside Procedures--Nov. '77 Through March '78	PR-77-56	10/20
			1978
12.	Exemption of Kerojet Fuel from Allocation & Price Regulations	PR-78-6A	7/27
13.	Exemption of Aviation Gasoline from Allocation & Price Regulations	PR-78-7A	7/27

14.	Contingency Gasoline Rationing Plan	PR-78-23	Oral Statement 8/23 H. S. Ingersoll
15.	Environmental Assessment-Motor Gasoline Decontrol	PR-78-26	7/18
16.	Draft Environmental Impact Statement on Decontrol of Motor Gasoline and Motor Gasoline Tilt	PR-78-26A	1/4
17.	Standby Product Allocation & Price Regulations	PR-78-28	Oral Statement 9/13--H.S. Ingersoll
18.	Revised Allocation & Price Regulations for NGL's (FERC Review of ERA Proposed Final Regulations)	PR-78-30	8/14
19.	Study of Subsidization of Motor Fuel Marketing	PR-78-33	Oral Statement 10/6--H.S. Ingersoll
20.	Alcohol Fuels (Methanol & Ethanol)--Evaluation of Commercialization Potential	PR-78-38	12/5
21.	Middle Distillates Set-Aside Procedures	PR-78-40	12/19
			1979
22.	Propane Decontrol Inquiry	PR-79-4	4/5
23.	Draft Regulatory Analysis--Decontrol of Propane	PR-79-4A	11/29
24.	Standby Product Allocation Order No. 1--Revised Mogas Based Period	NR-79-14	Oral Statement 3/22
25.	Extend Middle Distillate Special Order #9 and Amend Mogas Priority Allocation Levels	PR-79-33	12/20
26.	Base Period for Mogas Allocation	NR-79-38	7/5
27.	Special Rule No. 9--Middle Distillates Allocation for Agriculture Production	NR-79-40	5/18
28.	Special Rule No. 9--Addition to Middle Distillate Priority Allocation List	NR-79-40A	6/14
29.	Downward Certification of Reseller's Allocation Entitlements	PR-79-41	Public Statement 1/31

30.	Standby Mogas Rationing Plan	PR-79-43	Public Statement 1/7
31.	Extend Special Rule No. 8--Gasoline State Set-Aside to Retailers & Increase of Set-Aside to 5%	MR-79-45	8/13
32.	Mogas Allocation Base Period	MR-79-61	9/19
33.	Priority Allocation Levels for Mogas	MR-79-63	8/30
			1980
34.	Downward Certification Hearing	PR-79-41	1/31

EXHIBIT B

PERCENT OF MOTOR GASOLINE

SHIFT BY CLASS

LARGE INTEGRATED REFINERS

BRANDED PRODUCT TO LESSEE DEALERS

AUGUST 1972	AUGUST 1978	AUGUST 1979
43.0	32.6	32.2

BRANDED PRODUCT TO JOBBERS

AUGUST 1972	AUGUST 1978	AUGUST 1979
22.1	31.0	32.2

SHIFT OF VOLUME FROM BRANDED DEALERS IN THE PERIOD AUGUST 1972 TO AUGUST 1979 REPRESENTS DECREASE OF -29.54%.

SHIFT OF VOLUME TO JOBBERS IN THE PERIOD AUGUST 1972 TO AUGUST 1979 REPRESENTS INCREASE OF +45.77%.

SOURCE: U.S. DEPARTMENT OF ENERGY

EXHIBIT C

QUESTIONS AND ANSWERS

Question 1: How are allocations established for new dealers and how does the magnitude of these allocations compare to that for existing dealers?

Answer: We interpret "new dealers" to mean, in fact, "new stations." The allocation rules provide that volume available for new stations be determined by averaging the entitlement of those existing outlets most comparable to the proposed new outlet in the same geographic area. This is generally done by comparing the type of operation, e.g., full-serve station, number of gasoline dispensers, and number of hoses.

This approach allows the new station applicant seeking an allocation to identify the outlets to be used for comparison. Such outlets may, or may not, be truly comparable. Unfortunately, to our knowledge, the DOE has very seldom checked to determine if the identified stations were, in fact, comparable or that the applicant actually built the size and type of station he told the DOE was planned.

Additionally, DOE appears to have made little effort to consider the actual need for an additional station. Before controls the marketplace performed this function. Now it appears that the DOE can can issue an assignment that, being inequitable, could materially impact the economic viability of existing dealers in the general area.

Basis our experience, it appears that DOE's allocation assignments to new stations are generally higher than the existing stations' entitlements in the same area.

Question 2: What happens to the allocations of stations that have closed?

Answer: When a station supplied directly by a refiner closes, then that station's allocation entitlement reverts to the supplier's general supply pool. Under the requirements of the regulations, that product is redirected proportionally to all customers (of every type) supplied by the refiner.

Due to DOE's failure to adopt an enforceable downward certification policy, the allocation entitlement for a station closed by an intermediate supplier (jobber) remains with the jobber. The jobber is then free to reidstribute that product as he sees fit. During periods of loose supply, the jobber has the opportunity to broker or redistribute excess product and still retain his supply entitlement.

During periods of tight supply, a jobber may either sell all of part of the entitlement in his normal market. However, the opportunity for very profitable spot market sales to growth area customers is obvious under these circumstances, as growth area customers, limited by historic allocation, seek supply from almost any source at any price.

In addition to the ability to retain the volume from closed accounts, the jobber enjoys another significant advantage under the allocation regulations - namely, the ability to upward certify new accounts. This regulation allows the jobber to receive additional volume from his refiner-supplier upon submission of proper forms and approval by the DOE.

A refiner must accommodate any new directly supplied customers from the pool of product available for distribution to all of his historic customers. Consequently, refiners are reluctant to acquire new customers, whereas, jobbers are not. This further accelerates the movement of product from growth to rural areas. To date, the DOE has not been able to draft regulations that effectively address the downward certification issue.

If we must continue with an allocation program without an effective, enforceable downward certification rule, then refiner suppliers should enjoy the same right currently enjoyed by jobbers, that is, the ability to move volume made available by closing a station to their remaining customers. When a directly supplied station is closed, Shell should be permitted to move the volume from that station to other stations supplied by Shell in a manner consistent with the needs of the consumer. This would permit suppliers to recognize population shifts and other

supply/demand factors and place the product where it is most needed. This would not take anything away from Shell-supplied wholesale-resellers or their dealers. It simply would extend to dealers supplied by us the same rights enjoyed by dealers supplied by jobbers.

Question 3: Why are dealers receiving less than their full base period allocation if supplies of gasoline are generally plentiful?

Answer: Shell cannot speak for other companies since crude availability, refinery capacity, and a host of other operating considerations affect the availability of gasoline. In Shell's case, our customers are currently being offered 100 percent of their base period entitlement; however, this is based upon our historical experience regarding total liftings by all classes of trade. It is important to note that if all customers began to lift to the level of their base period entitlements - inflated in many cases by questionable adjustments allowed under current DOE regulations - then our supply capability would be able to accommodate only about 80 percent of their DOE entitlement and an allocation fraction would once again have to be imposed. Since this fraction would have to be applied to all customers nationwide, it would most likely not satisfy the ongoing shift in consumer demand, which is a continuing fact of life. Only under free market conditions (free of controls) can the problem of shifting

demand by accommodated by the actions of the more efficient and aggressive dealers. In our experience these re the businessmen who will operate competitively and stay open the hours necessary to satisfy the needs of their customers - if they can get the gasoline required.

Question 4: What problems are the current regulations creating for dealers, jobbers, refiners, and the public?

Answer: Boiled down to its essence, the current regulations do not allow supply to follow demand. Continuation of the existing regulations will not cure anything, and will probably continue to compound the market disruptions and inquitable treatment of the various elements in the gasoline supply chain from refiner to consumer.

Under the current regulations:

- Supply is frozen basis historical benchmarks. Growth areas are thus treated in a negative prejudicial manner.
- Inequities are perpetuated that result in certain suppliers, and ultimately the consumers who purchase their product, bearing higher than necessary costs.
- Marginal refinery operations and inefficient distribution and marketing networks, with their attendant high costs are perpetuated, and even encouraged to expand.

Consumption is encouraged rarther than discouraged.

Inflation is exacerbated.

The regulations do not recognize adequately (if at all) the realities of a changing marketplace. The Administration, Congress and the DOE should decontrol motor gasoline and allow normal marketplace actions to control availabiltiy.

Senator BUMPERS. Thank you very much, Mr. Bittles.
Mr. Mulit.

STATEMENT OF DONALD L. MULIT, VICE PRESIDENT, MARKETING, CHEVRON U.S.A., INC., SAN FRANCISCO, CALIF.

Mr. MULIT. Thank you, Mr. Chairman. I am pleased to represent my company this morning in discussing the gasoline allocation——

Senator BUMPERS. Let me ask you again to pull the microphone up a little closer.

Mr. MULIT. Yes, sir. In discussing the gasoline allocation topics mentioned in your letter of invitation. So that I will not unduly prolong my testimony, I am submitting for the record an expanded version of my oral remarks which I trust will be helpful to the analytical process review of your staff and any other governmental body that has an interest in these proceedings.

Before turning to the specific questions raised in your letter, I would like to provide a context for my answers by offering several general observations on the gasoline allocation regulations as a whole. Back in early 1974, when Congress first imposed mandatory allocation of crude and refined products by Federal law, our company recognized the need for some Federal law to supersede our contractual supply commitments. Although the allocation regulations developed were hastily drafted, they seemed to work reasonably well in getting us through the emergency of that period.

Once the immediate crisis had passed, however, we urged that the regulations be lifted and put into standby status. In that status, they could have been reorganized and probably simplified and put into readiness for use during a period of relatively severe shortage such as last spring. The base period could have been periodically updated while the regulations were in standby status so that they were ready to go. ERA's mad scramble of last year could thereby have been avoided.

We also believe that the regulations have now lived their present usefulness and should be put into standby status so that free market forces can again govern distribution of product. Chevron is not opposed to allocation controls per se in a time of true and severe temporary emergency.

On the other hand, we firmly believe that free market forces far more effectively distribute scarce resources in any but the most pressing of emergency needs.

Turning now to your specific questions, you have asked how gasoline allocations for new dealers are established and how the magnitude of these allocations compares to the magnitude for those

of existing dealers. The short answer is that the allocation regulations put existing dealers at a severe and unfair disadvantage relative to new dealers.

I will not elaborate on that point unless you desire me to do so. The DOE treats new service stations entirely different.

Senator BUMPERS. Is I might interrupt you, Mr. Prud'homme started off by saying that his company does not assume the position of being a willing supplier to any new customer, didn't you say that?

Mr. PRUD'HOMME. That is correct.

Senator BUMPERS. If that true of your company, Mr. Bittles?

Mr. BITTLES. If you are referring to assignments that we get from other people, that is certainly correct.

Senator BUMPERS. How about your company, Mr. Mulit?

Mr. MULIT. That is generally true with rare exceptions, sir.

Senator BUMPERS. You do not want to supply new dealers, that's company policy?

Mr. MULIT. At the present time.

Mr. BITTLES. Senator Bumpers, I did not mean to infer that we did not want to supply new dealers. What I was referring to were assignments we get by the DOE and others, business assigned to us that we are not interested in.

Senator BUMPERS. That's what you were saying, was it not, Mr. Prud'homme?

Mr. PRUD'HOMME. Yes, Senator Bumpers, but there is one proviso very important to keep in mind. As long as we are at an allocation fraction below 1, which means we do not have enough supply available to supply our existing dealers, we don't want new dealers.

Senator BUMPERS. At the 1 level?

Mr. PRUD'HOMME. There and above the situation changes because then we have adequate supply.

Senator BUMPERS. All right, is that——

Mr. BITTLES. I would like to clarify, are we talking about new dealers or new business ventures, new service stations? If we are talking about new dealers——

Senator BUMPERS. I'm talking about new outlets, a convenience store, for example.

Mr. BITTLES. We would not be interested in supplying new outlets of that type, that is correct.

Senator BUMPERS. And that's true of your company?

Mr. MULIT. That's true for the same reason, because of our allocation fractions.

Senator DOMENICI. Are you at 1 or over 1, each of you?

Mr. MULIT. We are at 90 percent this month, sir.

Mr. BITTLES. We are at 100 percent and have been for the last 2 months.

Senator METZENBAUM. But you could be at 100 percent, couldn't you, Mr. Mulit, if you wanted to? You have the product available to be at 100 percent?

Mr. MULIT. No, sir, we do not and I will explain that if I may in my response to your third question.

Senator METZENBAUM. Fine.

Mr. MULIT. Getting back to the matter of treatment of dealers and of new stations, as was mentioned, DOE does treat new service

stations entirely differently and uses a different basis for determination of what such stations might receive and I will not expand on that in view of the previous comments

Your second question was what happens to the allocations of stations that have closed and again, from the previous discussion, I think that can be summarized in the term that it depends on the circumstances and whether the dealer involved reopens in the same market area or whether the station was closed permanently and in which event if it was closed permanently, the volume goes back into the supplier's overall volume and does cause some slight adjustment in allocation.

Your third question was why dealers are receiving less than their full base period allocation if supplies of gasoline are generally plentiful? I believe I can best answer this question by discussing why Chevron's service stations now receive less than their full allocations.

The motor gasoline allocation system embodied in DOE rules is simply a system designed to distribute a limited commodity on an equitable basis. It is designed to cope with a situation where demand for product exceeds our ability to supply. Our current allocation fraction for this month is 90 percent which would lead you to believe that we are supplying less gasoline than we did in the base year.

In actual fact, Chevron this year expects to supply about 112 percent of the gasoline we supplied in the base period for the gasoline allocation system. For several reasons, both the obligation we have to supply product and the supply of product we have available have increased.

The problem is that our ability to supply has not kept pace with the increases in obligations and the motor gasoline allocation system is designed to concentrate the shortfall, the product shortfall, in the tight customer uses defined as nonessential in the allocation regulations.

To help explain this phenomenon, I would like to briefly mention the way the base period obligations are determined and comment on our current ability to supply product. Under the allocation system, we have an obligation to supply any customers we were supplying during the base period.

In concept, the customer is entitled to the volume received in the base period adjusted by a fraction that reflects our ability to supply product to all customers. In addition, we are obliged to provide product to customers assigned by the DOE, as well as provide increases over base period use to certain classes of customers.

We have also been obliged to provide long-term growth adjustment to the base period volumes received by all of our customers. To these requirements, prime suppliers must reserve 5 percent of the total gasoline supplies for the State set-aside program and the net effect of the adjustment set-aside customers is that we actually have obligations to supply 120 percent of the gas we provided during the base period after having already set-aside off the top 5 percent of our supply for the State program.

We have not been able to meet this sizable increase in gasoline demand. However, by running our refineries at a throughput limit for our downstream processing plants, making maximum economic

use of purchased products and carefully controlling our inventories, we have been able to raise our supply of gasoline to a level that should supply approximately 12 percent more volume in 1980 than that supplied in the base period.

Your fourth question is fairly openended and it asks simply what problems current regulations are creating for dealers, jobbers, refiners, and the public. This is a substantial topic which I cannot adequately cover in the remaining available time.

I would like to concentrate on one particular regulation and suggest how that particular regulation may be hindering equitable allocation of gasoline. I refer to the so-called upward certification rule and to the present lack of any corresponding downward certification rule.

The regulations provide that when a reseller, such as a jobber, is assigned a new account by the DOE he can upward certify the new volume to his supplier and the supplier must include it in his supply obligation. On the other hand, when the same jobber loses an account because the account moves, goes out of business, or finds another supplier in time of surplus, the jobber is not required to downward certify for the lost business.

That is, he continues to receive the volume for the account he no longer serves. Under the regulations, this may give him a surplus or at least permit him to raise his allocation fraction to his other customers. If his other customers are receiving all of the product they require, he is free to sell any surplus at his discretion.

The question of what, if anything, should be done about this anomalous situation was hotly debated before the DOE in a rulemaking proceeding earlier this year. As of this date, however, nothing has come of the rulemaking. Our company's position on the downward certification issue is contained in a set of comments we filed with the DOE on the rulemaking.

I will not review our position in detail here because the rule is somewhat complex and it would be difficult to explore all of its intricacies in the time we have. Our basic position is that at least some limited form of downward certification should be required. We would not oppose resellers' allocations being protected at some historical level, such as the level which existed in the current base period.

I believe it is safe to say that the current upward certification rule, combined with the lack of a downward certification rule, has been partly responsible, at least, for a number of strange phenomena such as one, there is now and was even last spring, a domestic spot market for gasoline composed in part of volumes not lifted from jobbers by customers who had moved or gone out of business, and two, the most severe shortages last year tended to occur in urban areas rather than rural areas because most urban areas are more frequently supplied by resellers. The resellers had extra gasoline because of the upward certification rule and the lack of any downward certification rule in many instances.

The upward and downward certification situation is one serious problem with the regulations. The different treatment of new service stations and existing stations is another. There are numerous others. We do not have a particular regulatory fix in mind for most of these problems.

However, I think our view of what should be done was best stated by the DOE's own Office of Competition in a paper they recently published advocating removal of both price and allocation controls from gasoline:

> It is always possible to ascribe some perversity or market distortion to a particular regulation or to the fact that it appears to be out-of-date. But this is misleading. If a moving part of a machine is clamped and the machine fails to operate properly, it may always appear that its performance could be improved by altering the position of the clamp. This is true but it obscures the more fundamental fact that the clamp should not be there at all.

We agree. Allocation controls are not presently necessary and they should be removed.

We recognize, of course, that the advent of decontrol will bring concerns to the marketers we serve. We understand these concerns. We obviously have an obligation to assure that the return to a free market will not create overnight disruptions and turmoil in supply relationships. In other words, we see a process of market transition from control to full decontrol.

For this reason, it is my company's intention to continue, for a reasonable length of time, to supply all our existing accounts, including those mandated to us by the DOE, assuming of course they wish us to continue their supply.

It is also our intention during this period of transition, to engage in no market withdrawals unless there were other suppliers willing to serve the area. Also, we would continue the same intermediate channels of distribution as now in effect. In other words, we would not divert significant volumes from our reseller distribution network into a direct company distribution network.

We would also build into our planning process coverage for emergency type needs such as are presently accommodated by State set-aside concepts. We would recognize the need for supplying a pro rata share of new end-user requirements, both wholesale and retail.

Inherent in this process is the recognition that for refined product price and allocation decontrol to take place, there is a need to continue the crude oil cost equalization for domestic refiners through the entitlements process until crude oil prices become fully decontrolled in September 1981.

Finally, we accept the concept that a standby allocation program for the Nation be ready in the event of need, such need being predicated on a serious, clearly defined, shortfall between supply and demand over the total marketplace.

I would be hopeful that other members of our industry would adopt practices of the type I have outlined here for my company. I'm sure they too seek an end to the controls that have outlived their usefulness and created market aberrations.

[The prepared statement of Mr. Mulit follows:]

STATEMENT OF DONALD L. MULIT, VICE PRESIDENT, MARKETING, CHEVRON U.S.A. INC., SAN FRANCISCO, CALIF.

Good morning Gentlemen:

My name is Don Mulit, and I am Vice-President, Marketing, with Chevron U.S.A. Inc. in San Francisco. I am pleased to represent my Company this morning in discussing the gasoline allocation topics mentioned in your letter of invitation.

Before turning to the specific questions raised in that letter, I would like to provide a context for my answers by offering several general observations on the gasoline allocation regulations as a whole. Back in early 1974, when Congress first imposed mandatory allocation of crude and refined products by federal law, our Company recognized the need for some federal law to supersede our contractual supply commitments. Although the allocation regulations developed were hastily drafted, they seemed to work reasonably well in getting us through the emergency of that period.

Once the immediate crisis had passed, however, large cracks in the structure began to appear. Some of the cracks had always been there, but customers and suppliers alike had been so preoccupied with keeping businesses afloat that the cracks had not been of special concern during the worst of the crisis. Other cracks were new, and more began to appear as time passed and the 1972 base period for gasoline allocation receded further and further into history.

From the end of 1974 until late 1978, we urged that the regulations be lifted and put into standby status. In that status, they could have been reorganized, probably simplified, and put into readiness for use during a period of relatively severe shortage such as last spring. The base period could have been periodically updated while the regulations were in standby status so that they were ready to go. ERA's mad scramble of last year could thereby have been avoided.

We also believe that the regulations should now be put into standby status, so that free market forces can again govern distribution of the product.

We review this history briefly in order to give you some background for my comments on specific topics. Chevron is not opposed to allocation controls per se in a time of true and severe temporary emergency. On the other hand, we firmly believe that free market forces far more effectively distribute scarce resources in any but the most pressing of emergency conditions, and that government programs which have outlived their usefulness should not acquire a life of their own, but should be scrapped. Turning now to your specific questions regarding the allocation regulations:

You have asked how allocations for new dealers are established and how the magnitude of these allocations compares to the magnitude for those of existing dealers. The short answer is that the allocation regulations put existing dealers at a severe and unfair disadvantage relative to new dealers. In order to explain how this happens, I need to review a bit of regulatory history with you.

In the spring of 1974 DOE's predecessors attempted to adjust the allocations of existing customers in two separate ways. First, they had an unusual growth adjustment, which was made according to a set formula. 1973 volumes were compared with 1972 volumes, and if the 1973 volumes were at least 10% greater than 1972 volumes the 1973 volumes were substituted as the customer's allocation. This adjustment could readily be made without applying any discretion. It was simply a matter of arithmetic.

But the Agency also experimented with a so-called changed circumstance rule. Under this rule, the Agency would consider situations such as closed service stations having caused increased demand on remaining service stations, changes in the local economy, new population, etc., in determining whether a gasoline purchaser's base period volume could be adjusted. The Agency's

experimentation with this rule was short-lived and the rule was withdrawn in October 1974 after the Agency was besieged with applications for adjustments owing to the changed circumstances. It appeared that virtually every bulk purchaser of gasoline in the country including service stations, had experienced some change in circumstance which the purchaser thought entitled him to an adjustment in his base period volume. Since that time, DOE has had a firm rule that no adjustments to existing stations' base period volumes are permitted for any reason. The only significant exception to this rule was another one-time unusual growth adjustment that was made last spring and again involved a set formula, with no DOE or supplier discretion involved.

This was calculated as follows:

A dealer's average monthly gasoline volume in a five-month period (October, November, December, 1978 plus January and February, 1979) was compared to his individual month's base period volume. If the five-month average volume exceeded the individual month's base period volume by 10% or more, the five-month average volume became the adjusted base volume for that month.

I should mention also that the Office of Hearings and Appeals has granted exception relief to a few operators of existing retail outlets if the operator can make some special showing of hardship or gross inequity on behalf of himself or the community in which the outlet is located. OHA has also granted relief to some dealers who made investments, such as remodeling investments, during the new base period, based on the expectation that they would be able to pay out the investment by purchasing certain quantities of gasoline. The great bulk of retail dealers, however, get no adjustment in their base period volume, no matter how much they spend renovating a station, (Ruling 1976-5), or no matter how much growth has occurred in the area they serve.

The DOE treats new service stations entirely differently. Allocations to those stations are covered by a set of published DOE Guidelines entitled "Guidelines for Evaluation of Applications for Assignment of Supplier and Base Period Use to New Gasoline Retail Sales Outlets." The Guidelines state the following general rule,

> "As a general rule, the average base period use for retail sales outlets of a similar size (number of pumps) and nature (full-service, cash-only, self-service, car-wash, etc.) in the same market area will be the appropriate assigned base period use."

The Guidelines go on to say that when there is no existing station of the type proposed for a particular market area, the DOE should look beyond the market area for a similar station in order to determine the appropriate allocation. These few words in the Guidelines have proved to be a bonanza for the expansion-minded marketers. For example, a large new self-serve unit will qualify for an allocation of the same size as the nearest self-serve unit having approximately the same number of pumps. This is true even if the new unit is the first and only self-serve in a town. Thus, a town containing five traditional dealer-operated full-serve units, each with a monthly allocation of 40,000 gallons a month, can find itself with a new self-serve unit which is awarded an allocation of 200,000 gallons a month. If one of the existing dealers in town decides to meet the new competition by converting his station to a self-serve unit and adding extra pumps, in order to achieve the throughput required for an economic self-serve operation, he cannot do so because DOE will not adjust his base period volume.

Recently, the DOE has put a new gloss on the Guidelines I have been discussing. They have issued what they call "Guidance" for application of the Guidelines. This Guidance was evidently intended to redress somewhat the imbalance between new and old stations under the DOE regulations. DOE now says that the effect which assigning a new service station has on a supplier's overall supply should be considered because making new assignments for new stations cumulatively diminishes the amount of gasoline available to existing stations. Regional offices are also instructed to collect detailed information on the service stations in the same area which may be affected by the new assignment. Unfortunately, the new Guidance by DOE does not tell regional offices what to do with this detailed information when they get it or how to go about making the judgment as to whether or not the assignment should be made. And if the assignment is made, the base period volume is established in accordance with the principles I discussed earlier, namely, the nearest station of the same type and size provides the model.

Your second question was what happens to the allocation of stations that have closed. The answer to that question is, "It depends." If the station is closed only temporarily, and if the former operator of the station reopens his business there within a reasonable period of time as determined by DOE, the former operator keeps the allocation. The same rule applies if he sells the business to someone else. The successor on the service station site accedes to the allocation, even if the station was closed for a brief period of time. On the other hand, if the station is closed permanently, the allocation evaporates unless the dealer moves his business to another location in the same market area. If he does move the business, the allocation moves also. If he does not move the business, the supplier must remove the allocation from his

supply obligation. The effect of this rule is to increase slightly the allocation fraction the supplier is able to declare each time a station closes and the business is not moved, assuming all other things remain equal. Each of the supplier's other customers receives slightly more gasoline than he otherwise did because the denominator of the allocation fraction has been reduced slightly.

There is one important exception to this rule on service stations which are permanently closed. Under the regulations, an entity which operates two or more outlets and closes one of them can transfer that allocation to one or more of its remaining stations, so long as it receives DOE approval to do so.

Your third question asks why dealers are receiving less than their full base period allocation if supplies of gasoline are generally plentiful.

I believe I can best answer this question by discussing why Chevron's service stations now receive less than their full allocations.

The motor gasoline allocation system embodied in DOE rules is simply a system designed to distribute a limited commodity on an equitable basis. It is designed to cope with a situation where demand for product exceeds our ability to supply. To simplify my answer I have chosen to discuss things within the allocation system which have increased demand for Chevron's products first, and then discuss factors which affect our ability to supply gasoline. For purposes of this discussion, keep in mind that any change in the system which increases the obligations of a supplier will lower his allocation fraction, just as any change which decreases his ability to supply product will lower his fraction.

Chevron's gasoline allocation fraction for June is .90, or 90%. On the surface this would indicate we are supplying 90% of the motor gasoline we supplied in the base period (November 1977 through October 1978). In fact some of our customers are limited to 90% of the product they received in the base period. However, many customers are entitled to receive 100% of their base period use under the DOE regulations.

For example, customers engaged in agricultural production, energy production, cargo, freight and mail hauling by truck, and other special activities receive 100% of base period use not subject to our fraction. These customers "get it off the top," so to speak. Nonpriority customers, such as service stations, share what is left. The DOE allocation system protects customers whose gasoline use directly affects the nation's economic well being or national defense, and allocates the remaining product to nonessential uses. Specifically, the program is designed to have the shortfall be most noticeable in the retail gasoline market.

The DOE regulations also give DOE the authority to assign customers to Chevron who were not Chevron customers in the base period. These "new" customers share the available supply, and some of these assigned customers are entitled to receive 100% of their base period use, as assigned by DOE.

New assignments are a very important factor in lowering our fraction. ERA assigns us new accounts all the time, and resellers supplied by us are also assigned new business. As I will discuss later in my testimony, these resellers automatically receive the gasoline for new customers from Chevron under the so-called upward certification rule.

Also, the Office of Hearings and Appeals assigns us to supply numerous new customers, for various reasons. There is an entire line of OHA cases known as "price disparity" cases. In such cases a jobber or service

station dealer claims he is unable to sell his allocation at a profit because his base period supplier's prices are uncompetitively high and asks OHA to assign him a new lower-priced supplier. Chevron has received numerous assignment orders under this program.

We also now have a line of OHA gasohol cases, in which OHA directs companies such as Chevron to supply unleaded gasoline to gasohol blenders. These are companies who manage to secure a supply of ethanol but lack the gasoline with which to blend the ethanol.

Every new assignment order and every adjustment to base period volume has the effect of lowering our allocation fraction since they do nothing to provide an increased source of supply to the refiner.

Also, a significant factor is the impact of the one-time growth adjustment previously mentioned. In our case this was a significant volume which we were forced to add to our base period obligation. In addition to these factors, we are required to set aside 5% of our production each month in the state set-aside program. This gasoline is available for the state government to direct to customers who have special hardships. In some cases, the state allows us to distribute this gasoline to allocated customers; however, this volume is not subject to the allocation fraction. As currently administered, this factor alone causes the allocation fraction to understate actual deliveries of Chevron gasoline to allocable customers by 4 to 5%.

The net result of these adjustments is an increase in supply obligations of 20% above the volume of gasoline Chevron actually supplied in June, 1978. In other words, if we are able to supply at a 100% allocation fraction, we would have to supply 20% more gasoline than we sold in the base period after having already set aside, off the top, 5% of our supply for the state programs.

We have not been able to achieve this sizable increase. However, we expect, for 1980, to supply about 12% more motor gasoline than we did in the base period, i.e., 112%.

Since the DOE allocation program forces the burden of the shortfall onto allocable customers, the allocation fraction is actually lower than it would be if everyone shared the shortfall equally, and our allocation fraction for allocable customers is currently 90%.

I have been discussing how the regulations require us to distribute what we have. I would now like to turn to how we get the gasoline we distribute.

In a given period, we have three sources of supply: gasoline can be manufactured from crude oil in our refineries; it can be purchased or borrowed as finished or semi-finished product; or it can be drawn out of inventories. A combination of decisions about these three factors determines how much gasoline we can supply in a given month.

Over the past several months there has been sufficient crude available for Chevron to operate its nine refineries at a throughput limit for downstream processing plants. This results in maximum production of light products (gasoline, jet fuel, diesel, and No. 2 heating oil), and therefore converts the crudes we are running to their highest end use. In our current operating situation, an increase in crude runs would result in an increase in fuel oil production without a corresponding increase in light product yield.

We do have the refining flexibility to increase production of gasoline (for instance) at the expense of another light product, but we do not have the flexibility to increase total light product volume. We are producing gasoline, heating oil, diesel, and jet fuel in accordance with the current

needs for those products, and the longer-term need to have sufficient product available later in the year as demands switch from gasoline to heating oil.

Chevron also has historically purchased both finished and unfinished products from foreign and domestic sources. We have made use of purchases to help make the flow of our products into the market at as consistent a level as possible. Our objective is to purchase to fill our needs whenever additional volumes are economically available and can be handled in our distribution systems.

We have maintained the highest level of purchases in our recent history since the light product supply shortfall brought on by the Iranian crisis early in 1979.

Chevron does not believe it is to the best interest of its customers or itself to purchase products or raw materials indiscriminately and thereby contribute to driving prices up with little or no change in total supply for the consumer. There is a delicate balance in the spot market between slight deficits or surpluses. These imbalances are temporary in nature and prices can move sharply up or down within small changes in supply availability.

I would now like to address briefly some concepts of inventory management during periods of shortages--or potential shortages.

I believe there is a basic misunderstanding in many quarters regarding the role inventory control plays in the prudent management of any business--especially when there is the threat of reduction of supplies.

The principal purpose of inventory management is to ensure a steady, uninterrupted flow of raw materials to the processing plants and of products from these plants, through the distribution systems, to the customer. Inventory is essentially an overhead cost, i.e., working capital, to ensure efficient and continuous production and distribution of products to consumers.

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Since inventories represent an operating expense, they are kept at relatively low levels when there is an assured source of raw materials to the processing plants with little danger of severe interruptions. The principal exception is for products with high seasonal demands. For these types of products it is necessary to build stocks during the off season to meet peak seasonal requirements.

However, when there are severe interruptions in the availability of raw materials, or there are threats of interruptions, then prudent business managers hold higher inventories of raw materials and finished products to protect their customers from sudden interruptions of raw material supplies.

This concept of inventory management is even more critical in the oil industry whose petroleum products are essential to the economy, the Defense Department and the public's health and safety.

Any sudden interruption of supplies when our inventories are high would be traumatic to our customers. These same interruptions at a time when inventories are low could be catastrophic. Certainly, the administration recognized this last year when they established a national middle distillate inventory goal of 240 million barrels by the end of October to ensure adequate supplies in case of foreign crude supply interruptions. This goal was to be met--and was met--at the expense of other light product availability such as gasoline.

One of Chevron's objectives in inventory management is to even out short-term fluctuations to the availability of supplies, and maintain a relatively constant allocation fraction from month-to-month, within its perception of long-term product availability. This reduces the potential for "feast" or "famine" for our customers, which could result in major disruptions

to the economy, the defense effort, or the public's health and safety. It also permits them to plan their petroleum usage with greater confidence and efficiency. For example, we are entering the summer driving season and we are building our gasoline inventories to meet this seasonal demand. At the same time we are permitting #2 heating oil inventories to drop from their peak pre-winter levels. Then, when the driving season comes to an end we will again build #2 heating oil inventories prior to next winter.

Another point that should be made regarding inventories is that they represent a relatively small amount of crude or product compared to our total daily demands. For example, Chevron's total available supply of light products, that is, from all tanks full to a minimum operating level, is in the order of 10 to 12 days' supply. This is the result of many years of effort to create a dynamic and efficient distribution system to provide continuous supply to our customers with minimum working capital tied up in inventories. I believe that our situation is pretty much typical of the industry.

In summary, in arriving at the numerator of our gasoline allocation fraction, Chevron plans to provide volumes of total light products for 1980 which are greater than the volumes sold in 1979 and 1978. We plan to continue operating our refineries at maximum efficiency, that is, maximum yield of light products per barrel of crude input.

We plan to supplement our supply of products through the timely and economic purchase of crude and/or finished and unfinished products depending upon distribution constraints and market conditions.

We plan to manage our inventories to protect our customers as much as possible from sudden disruptions in crude or product supplies.

We plan to distribute the available supply over the long-term at relatively constant allocation fractions.

Your fourth question is fairly open-ended. It asks simply what problems current regulations are creating for dealers, jobbers, refiners and the public. This is a substantial topic which I cannot adequately cover in the remaining available time. I would like to concentrate on one particular regulation and suggest how that particular regulation may be hindering equitable allocation of gasoline. I refer to the so-called upward certification rule and to the present lack of any corresponding downward certification rule.

The regulations provide that when a reseller, such as a jobber, is assigned a new account by the DOE he can "upward certify" the new volume to his supplier, and the supplier must include it in his supply obligation. On the other hand, when the same jobber loses an account because the account moves, goes out of business, or finds another supplier in time of surplus, the jobber is not required to downward certify for the lost business. That is, he continues to receive the volume for the account he no longer serves. Under the regulations, this may give him a surplus, or at least permit him to raise his allocation fraction to his other customers. If his other customers are receiving all of the product they require, he is free to sell any surplus at his discretion.

The question of what, if anything, should be done about this anomalous situation was hotly debated before the DOE in a rulemaking proceeding earlier this year. As of this date, however, nothing has come of the rulemaking. Our Company's position on the downward certification issue is contained in a set of comments we filed with the DOE on the rulemaking. I will not review our position in detail here because the rule is somewhat complex and it would be difficult to explore all of its intricacies in the time we have. Our basic position is that at least some limited form of downward certification should be

required. We would not oppose resellers' allocations being protected at some historical level, such as the level which existed in the current base period.

I believe it is safe to say that the current upward certification rule, combined with the lack of a downward certification rule, has been partly responsible, at least, for a number of strange phenomena such as, 1) there is now, and was even last spring, a domestic spot market for gasoline composed in part of volumes not lifted from jobbers by customers who had moved or gone out of business; and 2) the most severe shortages last year tended to occur in urban areas rather than rural areas because most urban areas are supplied directly by refiners, while service stations in rural areas are more frequently supplied by resellers. The resellers had extra gasoline because of the upward certification rule and the lack of any downward certification rule.

The upward and downward certification situation is one serious problem with the regulations. The different treatment of new service stations and existing stations is another. There are numerous others. We do not have a particular regulatory "fix" in mind for most of these problems. However, I think our view of what should be done was best stated by the DOE's own Office of Competition, in a paper they recently published advocating removal of both price and allocation controls from gasoline:

> "It is always possible to ascribe some perversity or market distortion to a particular regulation or to the fact that it appears to be out-of-date. But this is misleading. If a moving part of a machine is clamped, and the machine fails to operate properly, it may always appear that its performance could be improved by altering the position of

the clamp. This is true, but it obscures the more fundamental fact that the clamp should not be there at all."

We agree. Allocation controls are not presently necessary, and they should be removed.

We recognize, of course, that the advent of decontrol will bring concerns to the marketers we serve. We understand these concerns. We obviously have an obligation to assure that the return to a free market will not create overnight disruptions and turmoil in supply relationships. In other words, we see a process of market transition from control to full decontrol.

For this reason, it is my company's intention to continue, for a reasonable length of time, to supply all our existing accounts including those mandated to us by the DOE, assuming, of course, they wish us to continue their supply.

It is also our intention, during this period of transition, to engage in no market withdrawals unless there were other suppliers willing to serve the area. Also, we would continue the same intermediate channels of distribution as now in effect. In other words, we would not divert significant volumes from our reseller distribution network into a direct company distribution network.

We would also build into our planning process coverage for emergency type needs such as are presently accommodated by state set-aside concepts. We would recognize the need for supplying a pro rata share of new end user requirements, both wholesale and retail.

Inherent in this process is the recognition that for refined product price and allocation decontrol to take place, there is a need to continue the

crude oil cost equalization for domestic refiners through the entitlements process until crude oil prices become fully decontrolled in September 1981.

Finally, we accept the concept that a standby allocation program for the nation be ready in the event of need, such need being predicated on a serious, clearly defined, shortfall between supply and demand over the total marketplace.

I would be hopeful that other members of our industry would adopt practices of the type I have outlined here for my company. I'm sure they too seek an end to the controls that have outlived their usefulness and created market aberrations.

Senator BUMPERS. Again, I will ask the Senators to comply with the 5-minute rule. We have three more witnesses. I would ask everyone to confine their questions to 5 minutes to the entire group.

Let me ask Mr. Prud'homme this question. If you had three Arco stations within, say 2 miles on Hollywood Blvd., and one of them decided to cut his price, he is allowed 16.1 cents per gallon. Let's assume that one of those dealers—is that a fair statement?

Mr. PRUD'HOMME. It has just gone up to 16.8 cents.

Senator BUMPERS. OK. Now, one of the reasons for the increase in dealer allowance was because of limited quantities of gasoline available and so DOE gave him a larger margin of profit and tried to keep him in business. Let's assume you have three dealers and each one is selling 100,000 gallons a month.

One of them said, you know, I have this terrible labor cost and I'm staying open 12 hours a day and I have a lot of labor cost. If I cut my prices by 6 cents, I can sell 100,000 gallons operating 5 hours a day instead of 12 hours a day and let all my labor go home and I will still be ahead.

The other two dealers squawk to you and say, one of your own dealers here is trying to create a price war. What would your reaction to that be?

Mr. PRUD'HOMME. The dealer sets his own price. If he sees that it is to his advantage to cut the price and cut the hours, there's nothing we can do about it. If that became a general case, then the public becomes very inconvenienced if everyone does that and that is a problem we try to deal with. But we have no means to do it except persuasion.

Senator BUMPERS. I think if all of the stations then cut their prices 5 cents, the customer might be a little inconvenienced but he would welcome that inconvenience because he is getting a bargain price.

Senator MCCLURE. If they all cut their price, he would not be able to pump his 100,000 gallons in 5 hours.

Senator BUMPERS. The consumer still gets a break. Right now when we have these inordinately high gasoline inventories, I am at a little bit of a loss, other than the allocation system, to explain why these prices are not going down. Here is a 16.8-cents margin allowed to retailers and I would say probably 80 percent of them across the country are getting it.

Mr. PRUD'HOMME. I don't think that's the case.

Senator BUMPERS. What is the case? I admit, that was just off the top of my head.

Mr. PRUD'HOMME. The only information we have is from a commercially available report, the Lundberg Letter and I don't have the figures specifically in mind, but it seems to me as of some weeks ago they were talking about a 10-, 12-, 14-cent margin and my guess is that that has come down now somewhat.

With this excess product, we find stations who used to close, to have short hours, are now open much longer. For the first time in over a year, I bought gasoline yesterday on Sunday with no problem, all stations are open, in California the green flags are flying. There is competition in the marketplace today and dealers are having to cut their margins to sell their allocations. Given some

time, if they are left alone, this will continue, assuming no interruption of supplies in the future.

Senator BUMPERS. Let me ask you, just from the standpoint of Atlantic Richfield, did your company have a position on the President's 10-cent gas tax?

Mr. PRUD'HOMME. I believe we were in favor of it.

Senator BUMPERS. Do you not know?

Mr. PRUD'HOMME. I'm not sure the company has come out with a white paper on that, but certainly we in marketing are in favor of it, simply as a matter of encouraging conservation. The shortages that we have had in the past are going to recur. Crude oil production in this country is in a steep decline and we are not finding the reserves to replace it and we are even spending enormous amounts of money even with more rigs running today than have ever run.

The amount available here is going to go down and that means increasing imports. The president of Atlantic Richfield went on record a week ago saying that in his opinion before 1985, we will be importing close to 9 million barrels a day of crude, not the 8.76 we are today simply because we don't have it here.

We feel that everything that will encourage consumption and everything that will encourage production should be done, including 10 cents or 50 cents or a dollar.

Senator MCCLURE. You said everything that will encourage consumption.

Mr. PRUD'HOMME. I'm sorry, conservation. Everything that would encourage conservation and production.

Senator MCCLURE. I didn't mean to put words in your mouth.

Senator BUMPERS. Including rationing?

Mr. PRUD'HOMME. That seems to us to be a last resort.

Senator BUMPERS. Don't you think we're about down to the last resort? Are we really serious about breaking our dependence on OPEC? We are either serious or we aren't.

Mr. PRUD'HOMME. Yes. It is certainly a way of doing it. It's enormously expensive and enormously complicated and it seems to us there are better solutions than that. As a last resort, certainly we would favor it.

Senator BUMPERS. In the interest of time, Senator McClure.

Senator MCCLURE. Thank you, Mr. Chairman. First of all, in the brief time I have, I will apologize to the other three witnesses because I looked forward to hearing their testimony and asking some questions but I have a noon commitment which will make it impossible for me to stay.

That does not indicate that I am less interested in what is happening to the Independent Gasoline Marketers or Service Station Dealers of America and there are substantial problems in these areas as well as at the jobbers' level. I will look forward to reading the transcript of the responses of those witnesses to questions that are asked of them.

I would say to all three of you gentlemen that I am a little puzzled. All of the statistical information we have indicates that gasoline stocks are high. Yet you indicate that every one of you is on either 100 percent or less in allocation and that includes all the adjustments, does it not?

How can gasoline supplies be high, particularly compared to reduced consumption, and yet everyone is on allocation?

Mr. BITTLES. May I answer that for our case? What you say is exactly right. However, our exposure, for example, this month if you add up all the assignments and allocation volume numbers that all of our customers have, both dealer, jobber, commercial, and otherwise, would mean that we would more than sell 100 percent. We would sell closer to 115, 118 percent, almost 120 percent. If all of the customers bought every single gallon they were allocated, we would have to go from a 100 fraction down to an 80 fraction and those are allocations granted over a period of time, various adjustments made, special assignment by the DOE.

Senator MCCLURE. That's looking at your company by itself and not looking at the industry as a whole. Didn't I hear somebody say that we are at 112 percent?

Mr. MULIT. I did in reference to our own particular operating situation. We are putting into the marketplace 112 percent of the volume covered by the base period. We're actually putting more gasoline into the market than the base period.

Senator MCCLURE. It does not stretch my imagination to believe that if the products that come out of a barrel of oil are not price controlled with the exception of one fraction of that barrel, and that's gasoline, that a prudent manager will put no more than he has to into gasoline and as much as he can into things that are not price controlled, unless of course the price control is at a high enough level that that is equally profitable to him.

Mr. MULIT. Senator, if I may respond to that, in the instance of my company, we are operating our downstream reforming facilities at capacity. These are the facilities that turn out light products and we are attempting to balance the runs against meeting the marketplace needs of our airline customers, our customers for middle distillates, as well as the demand for motor gasoline.

As I mentioned, sir, part of the way we are meeting this demand is by buying product in the open market, gas oils and motor gasoline. It is not a case of our holding back or trying to manage the yield. We are actually having to buy product to fulfill these commitments.

Senator MCCLURE. You are buying product even above 100 percent of what you had done before and you buy that from refiners outside this country.

Mr. MULIT. Or in the gulf surplus product that may be available in the spot market in the gulf.

Senator MCCLURE. Each of you has indicated that you don't think the allocation system in a time of sufficient supply is necessary. I come to the abiding conviction from listening to you and other information available to me that there is enough product out there in the U.S. market or available to the U.S. market to meet all of the demand that now exists in the market and if that is the case we ought to do away with the allocation system.

We ought to keep the allocating bureaucracy in place or at least enough of it to monitor what happens in the marketplace in the event it becomes short again and we can immediately go into an allocation based on the latest available data. I think that's what I hear each of you saying and I look at the charts of last year when

Government ordered, in order that the President not have to campaign in New Hampshire snow while there was an insufficient supply of home heating oil in New Hampshire. The Government ordered building up the reserves of home heating oils.

The result was a depression in the quantity of the amount of gasoline produced. The results show up exactly as might have been predicted in the charts that show what actually happened last year. Gasoline production went to the lowest level, the lowest edge of minimal supplies of gasoline by mid-November.

But by mid-March, they were way above the highest possible operating range. In home heating oils, just exactly the opposite happened. As you might have guessed under the Government's political responses, we went way above the projected highest normal stock range, out into the surplus area and are still there in home heating oils.

I am not charging that Government did it purely for political reasons. That's fun to say but I'm not sure that's totally correct. I think everyone involved just wanted to make sure that no one was cold. It was easy to talk about a shortage of gasoline than to have people cold last winter so the Government regulators took no chance and the result is that the gasoline shortage was greater than otherwise would have been, as some of us tried to say at that time.

But I don't understand how we will get out of this if we are unwilling to get out of the allocation during a period of time when there is sufficient product. Hence, my preoccupation perhaps at knowing why you are at an allocation fraction when there is apparently a supply greater than market demand.

I think we came very close to a part of the answer when we were listening to Administrator Rollins when she indicated or came close to indicating that there is another Government policy also that must be served by allocation and that is to force a little conservation, both by keeping the supply relatively short and second, by keeping the price as high as possible.

If you allow the product to reach the market in adequate supply, the price will go down, and if the price goes down, people might start consuming more and some of our conservation effort might suffer.

Senator BUMPERS. Senator McClure——

Senator MCCLURE. My 5-minute speech is up. Mr. Chairman, again I don't know if the gentlemen would like to respond, but if there are brief responses I would welcome them.

Senator BUMPERS. On Senator Metzenbaum's time?

Senator MCCLURE. No, not on Senator Metzenbaum's time.

Senator METZENBAUM. Mr. Prud'homme, in looking at your energy hotline newsletter, you pointed out that DOE had called upon you to supply new retail outlets, 215 million gallons of gasoline annually, correct?

Mr. PRUD'HOMME. Yes, that was through December 10, 1979. Those were proposed orders and not all of that volume necessarily would come through us because this goes through jobbers. If the jobber had more than one base period supplier, then the order to supply the service station would be divided, or if the service station

did not need as much as it was allocated, then presumably it would not take as much.

Senator METZENBAUM. I also note that you indicated that—not necessarily your company but a liquor store with three pumps out front could gain an entitlement of 1,050,000 gallons annually or 87,500 gallons a month, is that right?

Mr. PRUD'HOMME. That's correct.

Senator METZENBAUM. A truckstop on a secondary road with two gasoline pumps got an entitlement of 2,250,000 gallons a year or 187,500 gallons a month, is that correct?

Mr. PRUD'HOMME. That's correct.

Senator METZENBAUM. A relocated station near a town of 3,000 inhabitants with a competing gasoline station getting between 120,000 to 180,000 gallons a year, that relocated station got an entitlement of 1,070,000 gallons for the year?

Mr. PRUD'HOMME. That is correct.

Senator METZENBAUM. Which is about six times the amount of the present station. A small grocery store with no pumps and no permit to install them got an assignment of 70,000 gallons a month or 850,000 gallons annually, is that correct?

Mr. PRUD'HOMME. Yes, sir.

Senator METZENBAUM. My question to you is that these are absolutely astounding figures to me and my question is, have you ever taken this up with the Department of Energy or ERA?

Mr. PRUD'HOMME. Yes, we have.

Senator METZENBAUM. What is their answer, how do they explain 2,990,000 gallons annually for a reopened station, it's incredible.

Mr. PRUD'HOMME. Essentially, we have taken it up with DOE regional offices which, as you heard from Administrator Rollins, are relatively understaffed and we would confirm that they don't have enough people to administer their own rules properly. Not that they need more people but fewer rules, perhaps.

They have thanked us for bringing this to their attention and they have turned over those where they think it is appropriate to their enforcement arm. They assign these on the basis of applications submitted by the applicant. The applications require the applicant to say here are some comparable service stations and we estimate that they do these volumes and our service station will be like those so therefore you should give us the same kind of volume.

In fact, we found many cases perfectly normally and naturally where the applicant picks and chooses his comparables quite carefully and he may go 3 miles away, skipping a lot of intervening stations and pick the big one. He may pick the one that is not at all like his station. We do have some photographs that make that point.

So the DOE regional offices take the application as submitted, they say we do not have the manpower to investigate these and therefore we will assume, other things being equal, that they are correct and grant entitlement of that volume.

Senator METZENBAUM. I must say that I am shocked. As I hear that they don't have the manpower, I guess they only have a budget of $10 billion last year, I guess it was hard to find enough people with that.

I think you or Mr. Bittles indicated what a great deal it would be for decontrol and my friends on the left have been cheering you on. But when we decontrolled the price of jet fuel, we were assured in the Congress that prices would only go up about a penny a gallon, that was the figure used and we were told that it would not have any impact on the airline rates.

Yet the fact is that jet fuel prices have gone up so much you can hardly read a newspaper on a daily basis without finding an airline asking for an increase in fares by reason of increase in jet fuel prices.

Knowing that to be the case, you also know what has occurred in connection with natural gas pricing. They told us it would be about an 8-percent increase and in my State the first year, it went up between 15 and 28 percent. How do we therefore accept the representation, the same representation we had with respect to jet fuels in adequate supply, we did not have it with respect to natural gas but jet fuels, in adequate supply market conditions will prevail and we don't need controls further.

How can we accept the representations of the industry in that respect in view of the past?

Mr. BITTLES. I think clearly the answer to that is that jet fuel prices have risen but I think you will find the margin of refiners has not changed. The margin of the refiners is basically the same and it's just been the cost of crude oil, the raw materials that cause the increase in jet prices was they have another product prices——

Senator METZENBAUM. If the margins did not change, how come oil companies' profits have soared to astronomical heights? Where did it come from?

Mr. BITTLES. I would suggest that is not necessarily the case. Let me speak of our own company. Our earnings based on our revenue, shareholders' equity. Whatever ratio you want to use, you will find have been very constant over the last 5 or 6 years. They have not changed, really.

Senator METZENBAUM. I don't remember Shell's but I remember others that have gone up 21 to 25 percent on equity, I think an average benefit 21 percent. I know the profit increases, my recollection is that they went anywhere from 70 percent to 290 percent and in some unusual cases as high as 1,000 percent but I think those are extraordinary situations.

Across-the-board oil company profits have zoomed. You say that margins have not increased. If they have not increased, where did the money come from?

Mr. BITTLES. Our net income last year, 1979, as a percent of revenue——

Senator BUMPERS. Revenues, good Lord. Revenues have doubled and therefore profits have doubled so you make the same amount of money—twice as much money for handling the same amount of product.

Mr. BITTLES. Related to capital investment, it has not changed that much.

Senator BUMPERS. Senator Metzenbaum, we'll be here till sundown if we get into that.

Mr. BITTLES. I say to you that the reason for those increases are related to the cost of raw materials and the crude price is increas-

ing. Whether we were under decontrol or under controls, there would not have been a difference in that situation.

Senator BUMPERS. Senator Domenici.

Senator METZENBAUM. The chairman says I can't say anything further but I disagree.

Senator DOMENICI. Mr. Chairman, I first want to express the same concerns as Senator McClure. I cannot stay for the independent witnesses, but I am genuinely concerned about their problem and will review it in detail.

Can I just talk with all three of you for a little bit about a problem that concerns me? In your opening remarks, you used the words "a successful dealer, successful filling station operator". I have a great deal of trouble understanding what that is, what that is going to be, and what that has been.

It does relate to some extent to where we are going. I think everyone agrees that the price of energy, including gasoline, is going up. I think it is agreed that the major conservation in this country has been attributed to increased prices.

If the other companies agree with Atlantic Richfield, we have assumed it ought to go up even more in order to affect conservation and that we ought to get ourselves in the position where price has something to do with demand. Then we can create a better equilibrium between supply and demand in this country than we have had in the past.

That leads me to conclude that filling station operators today and filling station operators, owners, managers in the future, are going to be completely different business entities than they were 10 years ago. I don't think you will measure their success as you did before.

I think if you did, you would have an inconsistency with the national goal. Do you really want filling stations up and down the street, up and down major freeways, to have different prices in the future? What is a successful dealer today and what is he going to be in the future?

Let me tell you what I think. I think for the most part, they will all have the same price, more or less. Their location and their other service, aside from filling up your tank, is going to determine whether they are successful or not. If I am wrong, I would like you to tell me. I truly believe that we are not going to have the same kind of situation we had in the past.

I don't think you expect it, so what is a successful dealer today and what is he going to be in the future?

Mr. PRUD'HOMME. Senator, I will try to respond from the basis of my knowledge of the situation. First of all, the successful dealer today, there are a great many of them and this may be the test, from one site alone a successful dealer today can net in excess of $100,000 annual income.

That is already an enormous change from the situation that used to exist when they were rather at the lower end of the economic scale. The successful dealer today is a real independent businessman. He is not a grease monkey but comes out from under cars and does lubricating jobs.

He's a businessman and has employees and a very substantial asset worth in excess of $500,000. He's open in some cases 24 hours

a day and he runs—he has major volumes going through his station at a million gallons a year, dollar a gallon, his revenue is $1 million a year. That's small business.

Senator DOMENICI. I understand that. I know they are much bigger businessmen and they have a lot more money. If the thrust in this country is going to be to get the price up high to curb demand, are we not looking for a different kind of service from a service station than we were 10 years ago?

That doesn't necessarily have anything to do with whether or not we should continue this crazy allocation program. But it seems to me when you get rid of it for a short while, you might expect different prices. The principal ingredient in success is not going to be that you can put up a sign saying I am selling cheaper.

Is that true or not? If it is not true, how do we have the inconsistency? We don't want the price coming down if it is our major conservation effort.

Mr. PRUD'HOMME. This has always been a volume driven business and I think it will continue to be a volume driven business. Even if prices are altogether across-the-board much higher, there will be price competition among individual dealers. One dealer or several individual dealers will say that by shaving the price, they will get more than enough volume to make up the loss.

Therefore, there will continue to be some price differentials. Without controls, they are not going to be 15 cents, and so forth, that is a result of regulations. In terms of services we will be looking for from dealers, I think there will continue to be great diversity among dealers. Some will be service stations in the old sense of the word where they do repairs and lubricating work and so on.

Others at perhaps the other end of the spectrum will be food stores. We have a program of adding convenience stores to a number of our sites and that sells foods and beverage and fast snacks and all kinds of things. There will be people in-between who are gas pumpers and try simply by selling more volume at a lower price somewhat to succeed. I think there will continue to be an enormous diversity and each dealer will try and develop what is best for him under the circumstances.

Senator DOMENICI. Would you all just quickly answer this? If we get rid of the allocation program as recommended by you and put in a standby allocation program, do you really expect that there will be, until that standby is put into effect, significant competition of price between stations? If so, do you expect that the independents will be able to compete with the majors if that occurs?

Mr. BITTLES. If we put in decontrol tomorrow, from a dealer's standpoint——

Senator DOMENICI. I didn't say decontrol price yet, I was speaking about today, allocation. We are rid of allocation and all the things you say it causes.

Senator BUMPERS. If you will excuse me, Senator Domenici, there isn't anything to keep the price from going down now. On 16.8 cents per gallon, there can be competition right now.

Senator DOMENICI. I understand that but they still have the problem of whether they will get supply or not, Dale, because of the aberrations.

Senator BUMPERS. The question is: If we abolish allocation today, will this generate competition and therefore price decline?

Mr. BITTLES. I believe we have that competition in the marketplace today. I think this 16.8 is higher in some States because it is a fictitious number and dealers are not making that much money today. We've talked about averages and someone said 11 or 12 cents and you can go into most of the major markets in the country today and find many dealers working on considerably less than that.

I think the competitive situation, if we can decontrol product tomorrow, really won't change that dramatically. What it will do, and it comes back, Senator Bumpers, to what you were saying earlier when we were talking about people have 100 percent. What it will do is allow that dealer who wants to grow and be more efficient and be a better businessman, this does not necessarily mean cutting the price, it will give him the opportunity to do that because at the present time when you say 100 percent, everyone is limited to a number and the fellow who wants to grow and do a better job and serve the consumer better can't do that.

If we go decontrol, he then has the opportunity to do that because he can gear his business to whatever volume he can attain. But I don't think that will change, going to decontrol from the product standpoint, dramatically or even slightly change the way dealers are competing today from a price standpoint.

Senator BUMPERS. Any of you fellows willing to trade the allocation system for divestiture of your retail outlets?

Mr. PRUD'HOMME. Is that the only choice we have?

Mr. BITTLES. That sounds like two bad ideas in a row. [Laughter.]

Senator DOMENICI. Could you answer mine real quick?

Mr. MULIT. I concur generally with the observations of Mr. Bittles. I think there is competition in the marketplace now. I think if the allocation were ended, it would tend if anything to enhance that competition and it certainly would not detract from it.

Senator DOMENICI. You don't see anything inconsistent with the national policy that says that we should have the price as high as possible? Atlantic Richfield supported 10 cents in his adlibbing. I am not attributing it to Atlantic Richfield, but he said even 50 cents.

If that's the national policy, you don't see any contradiction for us to build into that whole system competition so that there would be significant price disparity at the pump?

Mr. MULIT. No, I think the free marketplace competition represents the best economic system we can have. The price nonetheless will continue to go up because of the cost of the raw material and this plus, hopefully, some conservation ethic on the part of each and everyone of us will help us to get to the national goal.

Senator BUMPERS. Thank you all very much, gentlemen.

Mr. BITTLES. May I add one thing to that that I think has to be understood? Regardless of the volume out there that is available, in a free system the dealer should be allowed to do what he can to compete for it. He can't do it when there are controls there. Even though we are on a national conservation program and we should have that, maybe we should be using a lot less energy, that does not mean that the individual out there still can't compete for what

business is available because if we put him in that position, we will put him out of business.

Senator BUMPERS. You're dead right, Mr. Bittles, and I couldn't agree with you more than that because under the allocation system, a lethargic, no-good dealer can prosper if he wants to about as well as an energetic man can and that is one of the real failures of the system.

Thank you all very much for being here today. I will ask all three of the last witnesses to come as a panel, Mr. Robert Amori, vice president, north central region, National Oil Jobbers Council; Mr. J. A. Blum, counsel, Independent Gasoline Marketers Council; and Mr. Jack W. Houston, acting executive director, Service Station Dealers of America.

Gentlemen, would you please identify yourself?

Mr. BLUM. My name is Jack Blum and I am general counsel, Independent Gasoline Marketers Council.

Mr. AMORI. I am Bob Amori, Wyandotte jobber from Wyandotte, Mich., and currently the regional vice president, north central region, National Oil Jobbers Council.

Mr. PIERCE. I am Paul Pierce, special assistant, executive director, Service Station Dealers of America accompanied by Mr. Charles Shipley, executive director of Service Station Dealers Association of Michigan.

Senator BUMPERS. I take it Mr. Houston could not be with us?

Mr. PIERCE. Mr. Houston has been subpenaed to appear in court in Atlanta this morning and I am here in his stead, sir.

Senator BUMPERS. Fine, why don't we proceed from left to right? If you gentlemen will, we have to ring the gong at 1 o'clock under the Senate rules and if each of you will summarize and keep it as short as possible, I'd like very much to get into a question and answer session before we have to adjourn.

Mr. Blum.

STATEMENT OF JACK A. BLUM, GENERAL COUNSEL, INDEPENDENT GASOLINE MARKETERS COUNCIL, WASHINGTON, D.C.

Mr. BLUM. I have a prepared statement, Mr. Chairman, and I would appreciate if it was made part of the record and I will try to summarize the statement.

The allocation system is an unholy mess. The simple fact is you cannot have an allocation system based on history and expect it to stay in position through periods of shortage and plenty and have it work. It cannot work that way and yet we persisted in periods of plenty to keep an allocation system in place.

The whole idea of the system, I think it is important to keep in mind is to protect the relative competitive positions of marketers. It has nothing to do with getting gasoline into the country, it has nothing to do with anything other than making sure that suppliers don't cut off their customers during shortages and sell all the gasoline themselves.

That system has now been assigned a series of other tasks and is leading us in a direction which I think is disastrous. If the system is kept in place consistently in periods of glut, we will be regulating the gasoline business the way you first regulated the trucking business.

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We will have hearings on the national level on every service station in the United States and it's utter madness.

We strongly believe that the only way out of this mess is to set up a system that goes to a free market as soon as there is ample supply. The allocation numbers you have heard talked about are absurd numbers because they are built on upward certifications and changes in patterns and under DOE regulations.

Those numbers have no relationship to the amount of gasoline available in the United States and so to talk about where a fraction of 90, where a fraction of 80 is absolutely absurd. There are specific things that must be understood.

You may not decontrol allocation without decontrolling price and the reason is this. Some companies have low prices because of Government subsidies. You take Sohio which has had a tremendous subsidy from Alaska and then decontrol their allocations and Sohio would stop selling to its dealers and run its product through its own pumps.

It will sell every gallon it has itself.

Are price control regulations working, absolutely completely irrelevant to what market prices are today. If anything, I would argue they have kept the price up and not down and I ask you what other commodity in the United States has been under mandatory price controls, two separate systems for 7 years, as much as motor gasoline?

I believe the corrections that DOE comes up with are worse than the disease they are trying to cure. We've been through this so many times, it's absurd. They propose to promulgate regulations and have no real understanding of what the regulation will do.

After the fact, we discover what it will do and then more people come in asking for further relief. We should be absolutely out of this business, there should be a free market and no one should have the right to product.

Some people have said what about the dealer who is energetic and he can't get more and the guy who is not energetic can't go anywhere? The simple fact is the right to a product does not mean the right to sell it. There are many members of our association, we are large nonbranded independents, who have the right to all kinds of gallons of gasoline provided by Ashland Oil which is as much as 20 cents a gallon over Chevron, for example, and that is because of the absolute mess in the crude oil pricing program.

It doesn't make any difference how energetic our man who gets oil from Ashland is, he's up the creek. Until we get a situation where our man is not tied to Ashland and where he can go bargain directly with Chevron or shop the market, he is not going to be able to have his energy show up in terms of increased product or increased anything else and that's why we very much want this market freed up.

You have to understand one or two other things about the system, I think. There has been the greatest single administrative failure in memory in the Department of Energy. When we had a shortage back last spring, there was a backlog of 7,000 cases that ERA, all people looking for increased allocation.

The reason they needed help from ERA was a very simple one. ERA promulgated four sets of new regulations in 3 months and

nobody knew what the damn regulations meant. Shipments went to the wrong place, wrong people got them, there was no way to straighten the mess out and it was handed over to the Office of Hearings and Appeals.

We heard Ms. Rollins talking about Mel Goldstein. I think it's absolutely shameful that the only outlet for relief be one man. Instead of having one judge with 900 helpers or 300 helpers, we should have 30 administrative judges and a few people help him and get the damn cases decided and done with and over with.

It is an administrative nightmare and Ms. Rollins was absolutely right this morning when she talked about 10 people in a region and they can't cope with it. The levels of employees in those regions are not capable of coping with noncrisis situations and when we get into a situation as we did last spring, the system collapses.

I think the only thing we can do is be rid of the system of controls, especially in the times of surplus we are looking for.

One final thing. I heard majors here today talking about downward certification as the only answer because those poor fellows have been forced to supply all kinds of other people and the real question is competitive parity. If you go back to the original purpose of the legislation, it was to keep people in relative competitive position by a company.

What the majors are saying is if an independent closes his station, they want the gasoline back. The fact of the matter is that every year 10 percent of the stations in this country close. Leases are lost, there are fires, there are roads moved, population shifts and new stations opened.

The issue is, does a major open it or does an independent open it? Does a major open it as a dealer-operated station or will the independent have a shot at buying supply in an open market himself? I think that's what the fight over downward certification is about and what the majors want is all the gasoline back so they can decide where to put their dealers as opposed to where an independent might want to open up.

I will conclude my remarks with that and if you have any questions, I will be glad to try to answer them.

[The prepared statement of Mr. Blum follows:]

BEFORE THE

SUBCOMMITTEE ON ENERGY REGULATION

COMMITTEE ON ENERGY AND NATURAL RESOURCES

U.S. SENATE

ON BEHALF OF

INDEPENDENT GASOLINE MARKETERS COUNCIL
1015 Eighteenth Street, N.W.
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FEDERAL GASOLINE ALLOCATION PROCESS

Submitted by:

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June 9, 1980

My name is Jack Blum. I am the General Counsel of the Independent Gasoline Marketers Council, a trade association of nonbranded independent retailers of motor gasoline.

The gasoline allocation regulations and the Department of Energy's handling of those regulations have been one of the most serious ongoing concerns of the Independent Gasoline Marketers Council. Since regulations began in 1973, DOE has made it virtually impossible for nonbranded independent marketers to obtain allocations for new retail outlets, has repeatedly proposed changes in the regulations which would cut the allocations presently available to nonbranded independents and has administered the regulatory structure in a way that makes it impossible for an independent with a problem to obtain administrative relief.

It is our belief that these failures come from the failure of the Economic Regulatory Administration to understand the relationship of the allocation system to the price control system and the pricing problems which have resulted from crude oil price differences to refiners. The remaining failures have been failures of management and a lack of adequate in-house staff.

Further, the Economic Regulatory Administration has been exceptionally prone to respond to special pleadings from powerful segments of the industry for regulatory changes

which change the competitive balance which the EPAA was enacted to preserve.

To understand why we have the problems we do with the allocation system, one must return to its origins. In passing the EPAA, Congress was concerned, and properly so, that when there was a shortage of product independent marketers would not get a pro-rata share of the product that was available and that the vertically integrated majors would sell the product through their own outlets.

The allocation system was designed to prevent monopolization and distribute the pain of the shortage evenly among all segments of the industry. It was not meant as a substitute for consumer demand restraints such as rationing and taxation.

The allocation system is based on history. When it started, your right to supply depended on the identity of your supplier and your gallonage during the base year. That basic scheme has continued even though the base period has been changed repeatedly and various adjustment systems have been created.

It should be apparent that any allocation system based on history, must inevitably cease to work after a period of time. If an allocation system based on history is to function,

everyone in the system has to do exactly what they did at the same time last year because the system puts the same amount of gasoline in the same place it was in before. If an historical system is kept in place over an extended period of time, it will inevitably fail to account for changes in driving habits, shifts in population, changes in market preference and the thousands of other unknowable variables that lead people to make purchasing decisions even though it will keep the businesses that sell the gasoline with roughly equal access to product.

If the system is "corrected" to take other variables into account, the competitive balance is upset and there is no assurance that the "correction" will distribute gasoline any more equitably.

Another factor which dooms the allocation system to failure during an emergency, is that people change their driving habits drastically. That change in turn shifts, for the short term, patterns of demand. Any historically based allocation system can not deal with the new patterns.

To give you a concrete example, people tend to cancel their vacations and an historical allocation system automatically puts too much gasoline at ski resorts and at the beach.

In short, as a mechanism for maintaining competitive parity among station owners and jobbers vis-a-vis their suppliers, the allocation system can be defended. As a substitute for direct government action to restrain consumer demand in a crisis, such as rationing, penalizing automobile use, or a gasoline tax, the system is an abject failure.

You must also understand that although an allocation system gives a marketer the "right" to product it does not guarantee that the product can be sold. That is because product demand is a function of price. When DOE price regulations at either the crude oil or retail level favor one refiner over another the respective volumes of the marketers who buy from the favored and disfavored companies vary enormously.

For example, in recent months, subsidies in the entitlements program coupled with price control programs have enabled Standard Oil Company of Ohio to sell gasoline for 20¢ less a gallon than its competitors. As a result, Sohio's gallonage has soared and their competitors have lost as much as half of their year earlier volume. When a marketer is faced with that sort of volume loss, he must begin to look at ways of making his system more efficient so that he can survive. His options are to look for lower cost suppliers on the spot market or to shrink his business.

The Economic Regulatory Administration, apparently blind to these market realities, would look at a situation such as

the one in Ohio and say that there is a need to "update the base period to reflect increased demand" at Sohio stations and a need to take away allocation from everyone else. In fact, under these conditions, all an updated base period will reflect is an ERA regulatory failure. The new base period or the downward certification will merely bless the distortions of the earlier price regulations.

The ongoing persistent efforts of the Department of Energy to produce a "downward certification" regulation which would remove allocated gallonage from the hands of suppliers who have not sold them are, in our view, the direct result of pressure from the refiners who wish to take advantage of the price distorted market so that during the next crisis they will be the ones with the product to sell while the independent marketers have nothing.

We believe that the ERA cannot patch the allocation regulations. We disagree sharply with the conclusion of the GAO[1] that repair is possible. What must happen is that during periods of shortage, the regulations be invoked and that the moment supplies become ample, the regulations be removed. And, when I say the regulations must be removed, I include both price and allocation. By removing the regulations in

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[1]G.A.O. Rep., GASOLINE ALLOCATION: A CHAOTIC PROGRAM IN NEED OF OVERHAUL (April 23, 1980).

periods of ample supply, marketplace forces will determine where the gasoline goes and the "updated base period" will be the result of a recent free market experience and should be closely reflective or at least reasonably closely reflective of public demand.

Many DOE officials have come to believe that price control regulations and allocation regulations are unrelated and that allocation regulations can be removed while price controls are kept. The idea is politically attractive because consumers don't care about allocation decontrol but might react badly to price changes. The idea is absolutely wrong and utterly dangerous to our survival. For example, I discussed the situation of the Standard Oil Company of Ohio a few minutes ago. The Standard Oil Company of Ohio has both directly owned retail units and dealer operated units. Because its prices are 20¢ below the rest of the market, Sohio stations sell all of their gasoline in the first 3-4 hours of operation. If allocation regulations were removed, Sohio would simply take the volumes it now gives to independent dealers and sell them directly. By doing that, it could take all of the profits from its retail sales at no increase in overhead If prices were decontrolled, however, the incentive to engage in this sort of behavior is cut sharply because the company could raise its prices both at the wholesale and retail level

and would find it profitable to continue its dual distribution system.

Nonbranded independent marketers feel they have been faced with a Department of Energy two-sided squeeze. On one side, the Department has been trying to regulate the opening of new gasoline stations by making it impossible for an independent to receive an assignment of a supplier and an allocation for a new outlet. Under the regulations, however, major companies were able to open thousands of new outlets by indicating that they, as refiners, were "willing suppliers" of the new outlets. Refiners are always "willing" to supply themselves.

There is a natural attrition in the retail gasoline business. Every year 8-10% of the retail outlets in the country close because of changes in population, the movement of highways and the loss of leases. When this natural turnover is considered in light of the regulatory barriers to the opening of new stations and the constant DOE pressure on independents to have the supplies now going to stations which will be closed "downward certified," the trap set for the independent is clear. The regulations have no place for him other than extinction.

The allocation system is supposed to have administrative safety valves including ERA, OHA and the state set aside program. When a company's supplier cannot deliver gasoline as needed, in theory the companies without supply can go to ERA or OHA and ask for help or the companies can ask the officials running the state set aside program for emergency supplies. In any real crisis, all of these programs collapse.

Both ERA and OHA are hopelessly understaffed for crisis management, cannot increase their capacity to handle cases in a crisis, and are badly managed. OHA is especially crippled by the desire of a single manager to personally decide most of the thousands of cases that build up in an emergency. His approach has created a major regulatory lag which can only be cleaned up when the crisis ends. When the issue of management is raised, that office tells Congress it needs more people. In point of fact, there should be a group of 30 or more administrative law judges who perform the decisional function, instead of hundreds of analysts and one senior decision maker.

The General Accounting Office report on the gasoline allocation which I mentioned earlier did an excellent job of pinpointing the flaws in the administration of the program. The Department's handling of the allocation problems in the

gasoline crisis of 1979 was worthy of comic opera. We believe that there is at least a 70% chance but for the regulatory changes made on an emergency basis the entire crisis would have been averted. The allocation regulations were changed four times in three months without advance notice and without consultation with industry over operational problems.

Field offices had no idea of how to interpret Washington's ever changing regulations. Refiners and wholesalers had no idea who they were obliged to ship product to and how much they were obliged to ship. Everyone in the system took advantage of the confusion to hoard as much supply as possible knowing that the value of their inventories would increase as the crisis deepened.

Existing DOE price control mechanisms do nothing to control inventory profits because they are all tied to gross margins at the point of sale. This automatically encourages each holder of inventory to hoard it and wait for a price increase rather than distribute it as needed. Distribution is less profitable than hoarding.

Faced with chaos on both the price and allocation fronts, DOE tried to blame marketers and the operation of the "spot market" for the problems. In fact, the spot market and the

traders who make it function was the only mechanism capable of easing the supply crisis and bringing supplies to the people that need them. OHA came to a halt with a 6,000 case backlog of emergency requests.

To understand how and why the spot market functions, one must look at how the regulations functioned when the crisis hit. A shortage developed in California. Under the regulations, once California got its full allocation fraction no extra gasoline could be shipped there even though other areas had adequate supplies which could have been diverted. The major companies are permitted, under the price rules, to pay any price for spot gasoline and then average the spot cost with the rest of their supply. This raises their ceiling price. They immediately let the word get around the country that they were interested in obtaining suppplies of gasoline.

The majors entry as net buyers in the spot market at prices far over retail ceiling acted like a gigantic vaccum cleaner. Everyone who had surplus supply took it directly or indirectly to the major and sold it. The opportunity for profit was so great that some suppply was diverted unlawfully.

The majors then took the product they bought to California to ease the shortage. They averaged the high prices they paid for the spot product in with their other price controlled supply.

The Department of Energy's response was to announce that the behavior I have just described was criminal. They and the Department of Justice have started efforts to prosecute the participants and they have focused on the sellers of product, not the buyers.

I firmly believe none of the enforcement people understand that what happened (1) helped end the crisis, (2) solved the problem of regulatory inflexability, and (3) provided an alternative to the regulatory collapse at DOE.

The entire exercise has had an Alice-in-Wonderland quality to it.

If the allocation system is totally rigid, and if it continues to be based on history there must be a method for redistributing product. If the method is "downward certification" the result will be the movement of the profits to the hands of the refiners and away from the marketers. When the issue

of downward certification is raised, the real debate is whether the majors get all the money or whether others get the benefits from the system that Congress intended.

The invitation of this Committee asked several specific questions. You asked how the allocation established for the new stations compared to the size of allocations for existing stations. Inasmuch as nonbranded independents only rarely find willing suppliers for new stations, the issue is almost academic for us.

As a matter of public policy, however, new allocations should be much larger than existing ones. The days of the 30,000 gallon a month station are over. Cost pressures and competitive pressures require high volume operations which lower unit costs dramatically. Only a fool would open a new 30,000 a month unit.

If existing station owners feel unfairly disadvantaged they should have some mechanism for upgrading their facility and applying for a larger allocation. But to get high volume you need more than a large allocation, you need lower prices and the typical low volume retailer wants no part of that.

You asked what happens to the allocations of stations that have closed. For larger nonbranded operators, the answer is those allocations are moved or redistributed to other stations run by the same company in the same region. The nonbranded operator who closes stations in a crisis does so so that his supplies can be consolidated at a few stations and those stations can be kept open on nights and weekends. It was the large chain independents who stayed open when everyone else closed and they did it by consolidating their sales at a few units. To take those allocations away during a shortage would take one of the few elements of flexibility out the system.

We believe that the reason refiners operate on allocation fractions during a period of ample supply is in part to enable them to control their inventories. It is also a reflection of the fact that the allocation numbers that DOE has created are totally artificial. After all of the adjustments that DOE has built into the allocation system, a "fraction" of 80 to 90 means 100 + % of last year's deliveries for most refiners. The total gallonage available in the United States is significantly smaller than the total amount "allocated" under the system. Of necessity, this creates smaller allocation fractions.

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At this point, most of us in the marketing end of the industry have begun to view the regulatory apparatus of the Department of Energy as a gigantic machine that makes mud pies and has a conveyor belt at the end that keeps throwing them at us. Each new proposed amendment to the regulations, usually is the result of heavy lobbying by a group with either more leg men or more political clout than we have, and requires a major fight to protect our turf.

The next scheduled round of the regulatory battle, I would call it the next mud pie, is the effort by branded independent dealers to protect the smallest, most inefficient gasoline outlets, irrespective of their inefficiency, and irrespective of consumer demand for their services. The dealers are pressing for a "guaranteed allocation" not subject to a fraction and a sharp limitation on new entry in the business.

We find it ironic that as the Congress tries to extricate itself from truck regulation the Department of Energy is going into even more detailed regulation of the gasoline business including hearings on whether a new station should be allowed to open.

The answer to this mess is less regulation, not more and we urge you to push them in that direction.

If you have any questions, I will try to answer them.

Senator BUMPERS. Thank you very much, Mr. Blum.
Mr. Amori.

STATEMENT OF ROBERT AMORI, NORTH CENTRAL REGIONAL VICE PRESIDENT, NATIONAL OIL JOBBERS COUNCIL, WASHINGTON, D.C.

Mr. AMORI. I also have a prepared text and I would like to have the full text made part of the record and with that I would like to give you a brief discussion of it.

We are also concerned with the way the Department of Energy system is working and it is the type of system that former Deputy Administrator John O'Leary once said is not needed most of the time but when it is needed it's just not working.

In that light, I would like to discuss two critical areas of importance to independent gasoline jobbers today. First, the disparity of allocations for new stations versus existing stations and second, the importance of continuing the normal business practices rule.

As you know, the allocation of motor gasoline is governed by the procedures set forth in the DOE mandatory petroleum allocation regulations. These regulations establish one method for new stations to obtain volumes of gasoline and another method for existing stations to obtain additional volumes.

New stations must apply for an allocation and a supplier under the assignment procedures set forth in subpart C of part 205 of the regulations. The procedures are designed to insure the profitability of a new outlet.

Applications for these new allocations are processed through DOE's regional offices and the applicant need only demonstrate the availability of a willing supplier, the anticipated use of the gasoline, including present and estimated future needs of priority customers and that the volume requested to be assigned is normal and reasonable for its intended use, based upon allocations and sales at the nearest comparable outlet.

Under this procedure, major refiners have an extreme advantage, they are their own suppliers and can supply for their own facilities.

In contrast, application for increased allocation is heard by the Office of Hearings and Appeals and adjustments to an applicant's base period use are granted only for purposes of preventing or correcting a serious hardship or gross inequity, demonstrated by severe and inordinate financial difficulties. Therefore, exception relief is usually not available to enable an existing marketer to implement a planned business expansion or modernization.

Because of this current regulatory framework and the policies DOE has established for its implementation, a disproportionate amount of the available gasoline is being allocated by DOE to new gasoline stations, to the detriment of the small, independent marketers lacking enough capital to invest in a brand new operation.

Present circumstances demand that DOE act to equalize access to additional volumes of gasoline to existing stations as well as to new outlets. The very existence of the small business sector of the petroleum industry, the jobber as well as the independent dealer and concomittantly the viability of an economically sound and competitive petroleum industry is at stake.

NOJC has petitioned DOE for a public hearing into resolving the disparity between allocations for new stations and allocations for existing ones. I would respectfully urge members of this committee to support us in this move.

There are several issues, Mr. Chairman, which go to the lifeblood of our membership. One of these was downward certification. Thanks to the efforts of many members of this subcommittee and many of your colleagues throughout the House and Senate, it appears that the downward certification dragon has been slain, at least temporarily. We very much appreciate your support on that issue.

Another lifeblood issue, particularly in today's economic environment is continuation by our suppliers of historical business practices. DOE regulations (10 CFR sec. 210.62(a), the normal business practices rule) currently require that firms maintain their normal business practices.

This might include such things as prompt payment discounts such as 1-percent discount if payment is made within a specified period of time, usually 10 days. It includes credit limits and numerous other things such as continuation of credit cards, loading schedules, and freight allowances.

Many suppliers have attempted to circumvent this rule with some degree of success. DOE has been considerably less than vigilant in enforcing the provisions of the normal business practices rule. Some suppliers have petitioned that DOE eliminate the normal business practices rule completely.

A petition is currently being considered by the Department of Energy and I am afraid to report that some proposal to substantially weaken the normal business practices rule can be expected from the Department of Energy.

Mr. Chairman, any DOE recommendation to eliminate or weaken the normal business practices rule must be met with the same forceful, vocal opposition that met downward certification. If suppliers are allowed to discontinue historic business practices, then the price of gasoline can be expected to rise.

But to jobbers this issue transcends any price impact and goes directly to the heart of what we are discussing today—allocations. If my supplier cuts back drastically on my credit limits, as he has tried to do, I will be unable to purchase sufficient product to meet the needs of my customers. Generating sufficient cash to offset reduced credit limits will be very difficult if not impossible for many jobbers.

Not only must we generate that extra cash but so must our customers. If a supplier goes to a cash basis with his jobber, that jobber must do likewise to his customers. This can be particularly devastating in a local community where the jobber provides the petroleum needs of small farms and other commercial ventures, including lumber yards, bakeries, and social service transportation programs.

It also adds another burden on service station dealers served by jobbers. These dealers would have to be serviced on a cash only basis as well. I would add that I was recently chastised by one of my suppliers for sloppy business practices because I still extended credit terms in an effort to help my dealers stay in the business

rather than have them lose their facilities and carry their cash flow forward.

I was chastised for doing so and the comment was, we don't do it any longer and if you've got to do that in order to add your cash flow and go to the bank to borrow, that's your problem but you're doing it wrong and you don't need to do that.

Such a retooling of traditional industry practices in this or any other industry will have repercussions that cannot be completely forecast. DOE must carefully assess this prior to taking any action. If you take as an example 200,000-gallon-a-month jobbership and take away the credit terms traditional, 10-day terms, it would mean generating approximately $100,000 additional cash flow for that jobber and if the jobber does not have the collateral to accumulate going to the bank, it does not matter what his profit might be, he will not be in business because he doesn't have the cash flow availability and it becomes a critical area to him to continue supplying his customers.

Suppliers will likely counter this argument by saying that the industry has changed and that they no longer should be required to give prompt payment discounts, credit cards, or hauling allowances. While the general economic problems facing this country impact everyone, they certainly impact major oil companies less than jobbers or dealers.

Moreover, since oil companies control the cost of the product, they can and do factor in the costs of these services in the price of the product. These historic business practices are not given to jobbers through the charitable benevolence of their suppliers. They are services for which jobbers have paid a premium price for years.

I hope this subcommittee will express its opposition to DOE for any changes to weaken the normal business practices rule. In summary, I would like to say I appreciate the opportunity of being here this morning on these issues that have touched us. I think jobbers have some concerns and we ought to point out.

We talked about the increase of jobber volumes and the fact remains that many jobbers have converted from consignees and that has distorted some of those numbers. Jobbers have been asked and demanded by refiners to service stations or lose the allocation of those markets as they withdrew from those markets and I think there's a lot of reasons why some of these things might have occurred that should be interesting in discussions if you want to get into some of those.

Thank you for letting me be here this morning.

[The prepared statement of Mr. Amori follows:]

STATEMENT OF ROBERT AMORI, NORTH CENTRAL REGIONAL VICE PRESIDENT, NATIONAL OIL JOBBERS COUNCIL, WASHINGTON, D.C.

PREFACE

The National Oil Jobbers Council is a federation of 44 state and regional trade associations representing thousands of independent small business petroleum marketers. Members include gasoline and diesel fuel wholesalers, commissioned distributors of gasoline, gasoline reseller-retailers and a large number of retail fuel oil dealers. Members also wholesale or retail many other petroleum products, including kerosene, LP gas, aviation fuels and motor oils as well as residual fuel oil. Together our members market approximately 40 percent of the gasoline and 85 percent of the home heating oils sold in America under either their own private brand or the trademark of their supplier.

Good morning Mr. Chairman and members of the subcommittee. My name is Robert Amori and I am an independent gasoline marketer from Wyandotte, Michigan. I am here this morning representing the National Oil Jobbers Council. I have been active in NOJC for many years. I have served as Chairman of the NOJC's Brands Committee, Legislative Committee, and am now serving as the North Central Regional Vice President.

The NOJC is a federation of 44 state and regional trade associations representing approximately 15,000 small independent branded and nonbranded independent petroleum products marketers. (See Attachment I.) Jobbers historically have been able to compete effectively in the gasoline market because of their small size and closeness to the community they serve. They have the flexibility to respond quickly to the changing needs of their customers while keeping costs and prices at an absolute minimum. Innovation and economic efficiency have been the hallmarks of the jobber trade and the ultimate beneficiary has been the American public.

I am pleased to have the opportunity to discuss this morning the DOE gasoline allocation program. DOE's administration of the gasoline price and allocation system will stand as a time weathered memorial to what is wrong with government regulation. It is the type of system, as former DOE Deputy Administrator John O'Leary once said, that is not needed most of the time, but when it is needed it does not work.

I wish to discuss three critical areas of importance to independent gasoline jobbers today: the disparity of allocations for new stations versus existing stations, the importance of continuing the normal business practices rule, and a pending interpretation by DOE on whether card lock/ key lock marketing systems are legal under the allocation regulations.

NEW STATION ALLOCATIONS

As you know, the allocation of motor gasoline is governed by the procedures set forth in the DOE Mandatory Petroleum Allocation Regulations. These regulations establish one method for new stations to obtain volumes of gasoline, and another method for existing stations to obtain additional volumes. New stations must apply for an allocation and a supplier under the assignment procedures set forth in Subpart C of Part 205 of the regulations. The procedures are designed to ensure the profitability of a new outlet.

Applications for these new allocations are processed through DOE's regional offices and the applicant need only demonstrate the availability of a willing supplier, the anticipated use of the gasoline, including present and estimated future needs of priority customers, and that the volume requested to be assigned is normal and reasonable for its intended use, based upon allocations and sales at the nearest comparable outlet.

In contrast, an applicant for an expanded allocation must apply under procedures governing exceptions to the regulations (Subpart D of Part 205). Under the complicated exceptions procedures, an application for an increased allocation is heard by the Office of Hearings and Appeals (OHA). Adjustments to an applicant's base period use are granted only for purposes of preventing or correcting a serious hardship or gross inequity, demonstrated by severe and inordinate financial difficulties. Therefore, exception relief is usually not available to enable an existing marketer to implement a planned business expansion, or modernization.

Because of this current regulatory framework, and the policies DOE has established for its implementation, a disproportionate amount of the available gasoline is being allocated by DOE to new gasoline stations, to the detriment of the small, independent marketers lacking enough capital to invest in a brand new operation.

NOJC is aware that new policy guidance for evaluation of applications for assignments has been issued (45 Federal Register 15975, 1980) to direct the Regional Offices to more closely scrutinize applications for new service stations. While a step in the right direction, the guidance issued falls far short of the comprehensive revisions necessary to correct the severe burdens suffered by the small independent petroleum marketer as a result of the illogical distinctions drawn between new assignments and increased allocations. The new guidance, while subjecting applications for assignments to "closer scrutiny", addresses only one side of the problem. Present circumstances demand that DOE act to equalize access to additional volumes of gasoline to existing stations as well as to new outlets. The very existence of the small business sector of the petroleum industry -- the jobber -- and concomittantly the viability of an economically sound and competitive petroleum industry, is at stake.

NOJC has no statistics of its own to aid this committee in comparing the magnitude of allocations to new stations to that of existing ones. This information is in the possession of the DOE, which requires anyone seeking a new or expanded allocation to submit a form ERA 99. I believe that a review of these ERA 99's would provide the facts this committee needs in its inquiry into the gasoline allocation process.

NOJC has petitioned DOE for a public hearing into resolving the disparity between allocations for new stations and allocations for existing ones. (See Attachment II.) I would respectfully urge members of this committee to support us in this move.

NORMAL BUSINESS PRACTICES RULE

There are several issues, Mr. Chairman, which go to the lifeblood of our membership. One of these was downward certification. Thanks to the efforts of many members of this subcommittee and many of your colleagues throughout the House and Senate, it appears that the downward certification dragon has been slain, at least temporarily. We very much appreciate your support on that issue.

Another lifeblood issue, particularly in today's economic environment is continuation by our suppliers of historical business practices. DOE regulations (10 C.F.R. Sec 210.62(a), the Normal Business Practices Rule) currently require that firms maintain their normal business practices. This might include such things as prompt payment discounts such as one percent discount if payment is made within a specified period of time, usually 10 days. It includes credit limits and numerous other things such as continuation of credit cards, loading schedules and freight allowances.

Many suppliers have attempted to circumvent this rule with some degree of success. DOE has been considerably less than vigilant in enforcing the provisions of the Normal Business Practices Rule.

In recent days we have become aware of a petition for rulemaking, submitted to DOE by Texaco, which would attempt to amend the Normal Business Practices Rule (NBPR). The Texaco petition calls for this rule to be amended on the grounds that the rule has been too "broadly defined by the DOE" thus affecting almost every credit practice, delivery or billing method used or comtemplated by supplying companies. We would disagree with the "broad definition" contention.

In reality, we find that the Normal Business Practices Rule has been more ignored by the DOE than expanded upon or broadened in definition. We believe the Normal Business Practices Rule is quite clear as to its intent in this matter of changing payment schedules, etc. Texaco's petition for rulemaking would, in effect, legitimize the creeping credit changes that have been taking place in the petroleum marketplace since the onset of the new base period year and the economic difficulties of the last several months. We find this effort to amend the rule affecting jobber, dealer and consumer credit practices to be a serious threat to the continued economic viability of the independent marketing segment of our industry.

Mr. Chairman, any DOE recommendation to eliminate or weaken the Normal Business Practices Rule must be met with the same forceful, vocal opposition that met downward certification. If suppliers are allowed to discontinue historic business practices then the price of gasoline can be expected to rise. But to jobbers this issue transcends any price impact and goes directly to the heart of what we are discussing today - allocations. If my supplier cuts back drastically on my credit limits, as he has tried to do, I will be unable to purchase sufficient product to meet the needs of my customers. Generating sufficient cash to offset reduced credit limits will be very difficult if not impossible for many jobbers.

Not only must we generate that extra cash, but so must our customers. If a supplier goes to a cash basis with his jobber, that jobber must do likewise to his customers. This can be particularly devastating in a local community where the jobber provides the petroleum needs of small farms, and other commercial ventures including lumber yards, bakeries and social service transportation programs. It also adds another burden on service station dealers served by jobbers. These dealers would have to be serviced on a cash only basis as well.

Such a retooling of traditional industry practices in this or any other industry will have repercussions that can not be completely forecast. DOE must carefully assess this prior to taking any action.

Suppliers will likely counter this argument by saying that the industry has changed and that they no longer should be required to "give" prompt payment discounts, credit cards, or hauling allowances. While the general economic problems facing this country impact everyone, they certainly impact major oil companies less than jobbers or dealers. Moreover, since oil companies control the cost of the product, they can and do factor in the costs of these services in the price of the product. These historic business practices are not "given" to jobbers through the charitable benevolence of their suppliers. They are services for which jobbers have paid a premium price for years.

I hope this subcommittee will express its opposition to DOE for any changes to weaken the Normal Business Practices Rule.

CARD LOCK/KEY LOCK

For approximately 30 years, many innovative marketers throughout the United States have utilized the latest available technology to serve the gasoline and diesel fuel needs of their customers through the use of automated, or "card/key lock" gasoline dispensing systems. Although no two systems are exactly alike, generally speaking the "card/key lock" systems are characterized by the following features:

- Primary users. The card/key is used primarily by commercial, farm and local governmental entities such as police and fire departments, which often require access to their allocations of gasoline on a 24 hour-a-day basis.

- Non-discriminatory access. A card/key may be issued to any applicant who meets minimum credit criteria, in accordance with the Consumer Credit Protection Act.

- Recordkeeping. With respect to card lock systems, a central computer terminal records all transactions, which permits itemized billing, and allows customers to quickly spot theft and low-efficiency vehicles. The monthly computer printout also serves as a record of historical usage, facilitating the implementation and monitoring of DOE allocation and rationing rules.

- Efficiency. The card/key system is an economically efficient means of dispensing gasoline, enabling marketers to cut their operating costs and pass the resultant savings on to all customers.

- Safety. Since there is no cash transfer, the unattended card/key lock operations limit the risk of loss of life and property which may occur in service station robberies. The dispensing mechanism on a card lock pump is also generally much safer, with a lower incidence of equipment failure, than on bulk storage facility pumps located on farms and commerical sites. Because of its central location, regular maintenance of card/key lock outlets is facilitated.

- Reduces air pollution. With access to a card/key lock operation, customers no longer need to maintain their own bulk storage facilities, thereby reducing the amount of vapors emitted through evaporation of gasoline stored in small above-ground tanks located on farms and commercial sites.

- Enhances competition. The card/key lock system of dispensing gasoline is an innovative marketing technique which serves the public interest by enhancing the competitive viability of the petroleum marketing industry as a whole.

Although automatic gasoline dispensing equipment has been in use for 30 years or more in both the United States and Europe, the Department of Energy has recently undertaken a series of actions against individual card/key lock operations in an apparent attempt to outlaw them on a case-by-case basis. These actions, which consist of denials of allocations for new card/key lock operations, rescission of allocations for existing operations and issuance of "cease and desist" orders, have been instituted without prior public notice of a change in policy and without benefit of public hearings. These actions are based upon a selective determination, unsupported by a balanced reading of the Emergency Petroleum Allocation Act, the implementing regulations, and case law, that the card/key lock marketing mechanism is discriminatory in that it "does not equitably distribute product among all users." By means of an "Interpretation" to be issued by its Office of the General Counsel in the near future, DOE is about to take a definitive position on this issue that could spell the demise of all card/key lock operations across the country.

The recent movement toward initiating enforcement proceedings against card/key lock operations is based upon DOE's mistaken and unsupported determination that such outlets illegally discriminate against non card/key holders. Specifically, DOE is concerned that only credit worthy customers will be issued cards/keys, and that out of town customers will be unable to gain access to the local card/key outlets. These concerns have no basis in fact.

- Applicants for cards are fully protected against arbitrary discrimination under the provisions of the Consumer Credit Protection Act. In practice, this means that anyone who meets minimum credit criteria may obtain a card. Rather than discriminating against the poor, a credit program may be the only means by which certain individuals can continue to afford the gasoline they need in these inflationary times.

- In view of the fact that computer technology is continually being refined and improved, the unattended, automatic mechanism for selling gasoline may well become the nationwide norm in the years to come. Under such a nationwide system, tourists and others in transit will be assured access to volumes of gasoline in every area of the country. Only if DOE refuses to allow this technology to develop will the local card/key lock operation have a discriminatory effect upon the out of town visitor in need of gasoline.

- DOE itself is considering the issuance of magnetic cards in the event a rationing plan is put into effect. DOE should be encouraging, rather than discouraging private industry to

institute a system which could facilitate the implementation of a rationing plan in case of a severe shortfall or other national energy emergency.

DOE's position on the card/key lock system is not based upon legal grounds, but is rather a political stance, a function of its reluctance to be viewed as condoning a method of selling gasoline which it mistakenly views as discriminatory. If the "Interpretation" to be issued in the near future by DOE proves unfavorable to card/key lock operations, stepped up enforcement and denial of allocations could cause all operations to shut down, causing forfeiture of substantial investments by marketers.

SUMMARY

I very much appreciate the opportunity to be here this morning. The issues I have touched on are very important to our membership. While there are countless other criticisms that can be levied against the DOE allocation program, it has at least one redeeming value. In a disagreement between a supplier and a marketer, there is a source of appeal to a supplier's decision. While this should in no way be construed as an endorsement of existing price and allocation regulations, it does establish that many marketers would like to equalize their negotiating posture vis a vis their supplier in a decontrolled market. The need for this equalization in negotiations is something I hope this subcommittee will address themselves to prior to decontrol.

I will be happy to answer any questions you may have.

Attachment I

NOJC represents these member associations:

Alabama Petroleum Marketers Association
Arizona Oil Marketers Association
Arkansas Oil Marketers Association
California Independent Oil Marketers Association
Colorado Petroleum Marketers Association
Independent Connecticut Petroleum Association
Petroleum Association of Delaware
Oil Heat Institute of Greater Washington (DC)
Florida Petroleum Marketers Association
Georgia Oilmen's Association
Illinois Petroleum Marketers Association
Indiana Oil Marketers Association
Intermountain Oil Marketers Association
Iowa Independent Oil Jobbers
Kansas Oil Marketers Association
Kentucky Petroleum Marketers Association
Louisiana Oil Marketers Association
Maine Oil Dealers Association
Petroleum Council of Maryland
Better Home Heat Council of Massachusetts
Michigan Petroleum Association
Mississippi Oil Jobbers Association
Missouri Oil Jobbers Association
Nebraska Petroleum Marketers, Inc.
Independent Oil Men's Association of New England
New England Fuel Institute
Better Home Heat Council of New Hampshire
Fuel Merchants Association of New Jersey
New Mexico Petroleum Marketers Association
Empire State Petroleum Association, Inc.
North Carolina Oil Jobbers Association
Northwest Petroleum Association
Ohio Petroleum Marketers Association, Inc.
Oklahoma Oil Marketers Association
Oregon Oil Jobbers
Pennsylvania Petroleum Association
South Carolina Oil Jobbers Association
Tennessee Oil Marketers Association
The Texas Oil Marketers Association
Virginia Petroleum Association
Washington Oil Marketers Association
West Virginia Oil Jobbers-Distributors Association
Oil Jobbers of Wisconsin, Inc.
Wyoming Petroleum Marketers Association

National Oil Jobbers Council
1707 H Street, NW
Washington, D.C. 20006
(202) 331-1198

Attachment II

The Petitioner

The National Oil Jobbers Council (NOJC) is a federation of 44 state and regional trade associations representing approximately 15,000 independent petroleum product marketers. Members include gasoline wholesalers, commissioned distributors of gasoline, and gasoline reseller-retailers. Members also wholesale or retail many other petroleum products, including diesel fuel, fuel oil, kerosene, LP gas, gasohol, aviation fuels and motor oils. Together our members market approximately 25 percent of the gasoline sold in the United States under either their own private brand or the trademark of their supplier. The vast majority (95%) of our membership qualify as small businesses under Small Business Administration loan size guidelines.

Petition for Rulemaking

In accordance with 10 CFR §205.161(b), the National Oil Jobbers Council (NOJC) hereby files its petition for rulemaking to revise Subpart F of Part 211, Mandatory Petroleum Allocation Regulations, and Subparts B, C, and D of Part 205, Chapter II, Title 10 of the Code of Federal Regulations. In so doing, NOJC calls upon the Department of Energy (DOE) to correct the illogical distinctions and the resultant severe inequities which exist in the allocation regulations between procedures to obtain assignments for new service stations and increased allocations for existing stations. DOE allocation regulations must be revised to permit allocation increases at existing stations in cases of increased demand. Concurrently, DOE must put an end to the almost automatic approval of assignments to new outlets.

Background

As presently drafted, 10 CFR §211.12 (e)(2)(ii) provides that a new wholesale purchaser-reseller without a base period supplier must apply for an assignment of volume and a supplier under Subpart C of Part 205. This Subpart (10 CFR §205.30 et. seq.) establishes procedures which may be met with relative ease by the owner of a new service station, and unfairly favor refiner operated outlets. Applications are processed through DOE's regional offices and need only demonstrate the availability of a willing supplier, the anticipated use of the allocated product, including present and estimated future needs of priority customers, and that the volume requested to be assigned is normal and reasonable for its intended use based upon allocations and sales at the nearest comparable outlet. Under Guidelines established by the Office of Petroleum Operations Policy, a presumption is favor of assignments exists. In contrast, an applicant for an increased allocation must proceed under the provisions of Subpart D of Part 205 governing exceptions to the regulations. Under

this Subpart (10 CFR §205.30 et. seq.) an application for an increased allocation is heard by the Office of Hearings and Appeals (OHA). Adjustments to an applicant's base period use are granted only for purposes of preventing or correcting a serious hardship or gross inequity. While a number of factors may be analyzed by OHA to determine whether the serious hardship criterion has been satisfied, generally speaking exception relief will be granted only upon a strong showing that the application of a regulatory requirement in a particular factual setting has resulted in "severe and inordinate financial difficulties." (7 FEA Par. 80,0006) Thus, exception relief is not available to enable a firm to implement a planned business expansion, (Mc Mahon Oil Co., Inc., Case No. DEE-2346, 7 FEA Par. 80,055), or to enable a jobber to retain new accounts (North Side Services, Case No. DEE-3341, Rex Oil Company, Case No. DEE-2418, see generally 7 FEA Par. 80,055).

As a result of the current regulatory framework, the policies DOE has established for implementation, and the current tight supply picture, a disproportionate amount of the limited supplies of gasoline available is being allocated by DOE to new gasoline stations, to the detriment of the small, independent marketer. The number of refiner operated outlets has more than doubled since 1972, rising from 12.7% of the market to approximately 26%. Many of these refiner operated stations are of the high volume, super pumper variety, with allocations of 150,000 gallons or more. Yet, since 1974, more than 60,000 independent gasoline marketers left the marketplace — 17,000 went out of business in 1979 alone. The number of small jobbers (those handling less than 3 million gallons per year) has declined substantially. Thus, the current regulatory framework has created an anti-competitive environment in which the refiners are thriving, having increased their share of the retail market by more than 13%, while the small independents are suffering adverse marketing conditions and going out of business at alarming rates.

Proposals

Specifically, the problems in the allocation regulations in need of correction are as follows:

1. The Guidelines for evaluation of allocations to new gasoline station outlets favor refiners in that applicants must demonstrate the availability of a willing supplier. Refiner operated outlets are, of course, assured of a willing supplier, while independently-run stations are not. As DOE has stated that only under compelling circumstances will it assign a supplier (Guidelines, 4(b)(v)), generally speaking, independent marketers suffer severe disadvantages in opening new stations.

2. The assignment of new allocations necessarily reduces the volumes available to existing stations. And in periods of significant shortage, their volumes are diminished disproportionately. Since new stations have been granted assignments to ensure a profitable return on investments, they can weather periods of substantially reduced supplies. In contrast, existing stations are more likely to fail during periods of shortage, as their already low base period volumes are further reduced by their suppliers.

3. Due to the differences in procedures which must be followed by applicants for assignments and applicants for increased allocations, owners of existing stations are systematically prevented from expanding their services or obtaining new accounts, while requests for allocations for new stations are, for all practical purposes, automatically approved. Because the exception process is not designed to address the general application of DOE regulations, but is justified only in cases where the regulations have created an anomalous situation unusual with respect to the applicant, existing stations generally cannot receive adjustments to their base period volumes whether or not they are able to operate profitably. New assignments, however, are made on the basis of volumes necessary to ensure the profitability of new stations. A rational basis which justifies the regulatory distinction between the two procedures, and its devastating effect upon the competitive viability of existing marketers, defies the imagination.

NOJC is aware that new policy guidance for evaluation of applications for assignments has recently been issued (45 Fed. Reg. 15975, 1980) to direct the Regional Offices to more closely scrutinize applications for new service stations. While a step in the right direction, the guidance issued falls far short of the comprehensive revisions necessary to correct the severe burdens suffered by the small independent petroluem marketer as a result of the illogical distinctions drawn between new assignments and increased allocations. The new guidance, while subjecting applications for assignments to "closer scrutiny", addresses only one side of the problem. Present circumstances demand that DOE act to equalize access to additional volumes of gasoline to existing stations as well as to new outlets. The very existence of the small business sector of the petroleum industry--the jobber--and concomittantly the viability of an economically sound and competitive petroleum industry, is at stake.

The rulemaking for which NOJC is petitioning should consider the following concepts:

a). The exception procedure (Subpart D) is inappropriate for purposes of obtaining increased allocations at existing stations.

b). The adjustment procedure (Subpart B) should be amended to permit an increase in base period volumes based upon a demonstration of a planned business expansion.

1). Criteria could include:

A). evidence of or plans to effect a major change or substantial improvement to an existing facility which would--

i). upgrade such facility by a significant percentage of its market value;

ii). benefit the public by improving access, installing ramps for wheelchairs, providing faster and more efficient service by installing new equipment to speed up movement of product etc.;

iii). respond directly to changes in demand patterns, such as the construction of a shopping mall, school, hospital, office building, or highway nearby, or increases in the surrounding population.

- - -

b). The availability of, and need to service, three party agreements, or new accounts.

c). A size standard for both new assignments and adjustments which would consider factors such as size, location, present and anticipated demand, and profitability of an outlet, with an established maximum limit.

d). A priority scheme in which existing stations would receive top priority for increased allocations, while non-refiners opening new stations would receive second, and new refiner direct-operated outlets third, priority.

e). A direction to the DOE regional offices that upon receipt of an application for a new assignment, a study be conducted to determine whether the community and the competitive viability of the petroleum industry would be better served by increasing allocations at existing stations.

NOJC realizes that by removing applications for increased allocations from the exception process, the regional offices will experience a certain amount of increased paperwork. However, the public benefit which would be gained by the rulemaking petitioned for would far outweigh such concerns. A careful drafting of criteria and procedures under which applications for increased allocations would be considered could provide some means of restraint. Additionally, a rulemaking would afford an opportunity for comment and public hearing at which problems and policies with respect to allocation adjustments and assignments could be openly addressed and evaluated.

DOE is mandated by the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 753(b)(1)) to provide for the equitable distribution of petroleum products throughout all areas of the United States and amongst all sectors of the petroleum industry, to the maximum extent practicable. DOE must also preserve an economically sound and competitive petroleum industry, foster competition in the marketing sector of the petroleum industry, and preserve the competitive viability of the independent marketer, both branded, and unbranded, as well as the refiner. The National Oil Jobbers Council urges the Department of Energy to act upon this mandate at the earliest possible date. Rulemaking proceedings must be instituted to reverse the anti-competitive trends created by the present regulatory framework. As statistics show, the continued existence of the small, independent petroleum marketer depends upon it.

Respectfully submitted,

Barbara J. Faulkner

Barbara J. Faulkner
Counsel

Senator BUMPERS. Thank you. Mr. Amori.
Mr. Pierce.

STATEMENT OF PAUL E. PIERCE, SPECIAL ASSISTANT TO THE EXECUTIVE DIRECTOR, SERVICE STATION DEALERS OF AMERICA, INC., WASHINGTON, D.C., ACCOMPANIED BY CHARLES SHIPLEY, EXECUTIVE DIRECTOR, SERVICE STATION DEALERS ASSOCIATION OF MICHIGAN

Mr. PIERCE. Mr. Chairman, in the interest of time, I would like to request that Mr. Houston's statement be submitted entirely in the record with one brief comment I would like to make and then the Chair can refer to Mr. Shipley who would like to make a brief statement and comment on some of the discussion this morning.

In Mr. Houston's statement, he has pointed out quite vividly that we have noticed in the past few months that there has been an effort on the part of DOE, particularly ERA, to try to work out some proposals that would benefit all concerned.

In view of Ms. Rollins' statement here this morning of a proposal she signed this past Friday, we would like to respectfully request that the record of this subcommittee be held open for at least 10 days so that our organization will be able to present to you our observation on that proposal and any others that might be forthcoming to deal with the allocations issues.

Senator BUMPERS. We will do that, Mr. Pierce, but we may, this subcommittee has not had an opportunity to look at those and review them either and there will probably be a future hearing anyway but we would be happy to receive any additional comments you might have.

Mr. PIERCE. Thank you, sir, and with that, I would like to turn it over to Mr. Shipley if I could. Thank you.

[The prepared statement of Mr. Houston and a subsequent submittal follows:]

STATEMENT

ON BEHALF OF THE

SERVICE STATION DEALERS OF AMERICA
(formerly the NATIONAL CONGRESS OF PETROLEUM RETAILERS)
2021 K Street, N.W., Suite 303 Phone 202/293-6868
Washington, D.C. 20006

BY

JACK W. HOUSTON
ACTING EXECUTIVE DIRECTOR

BEFORE THE

SUBCOMMITTEE ON ENERGY REGULATION

COMMITTEE ON ENERGY AND NATURAL RESOURCES

U. S. SENATE

PURPOSE OF HEARING:

TO RECEIVE TESTIMONY ON SPECIFIED QUESTIONS

RELATING TO GASOLINE ALLOCATION RULES

JUNE 9, 1980

Mr. Chairman, my name is Jack W. Houston. Thank you for inviting me to appear at this hearing to answer questions and to present the views of the Service Station Dealers of America (SSDA) which represents 60,000 gasoline retail dealers who are members of our 42 affiliated local dealer associations which are located in 38 states, the District of Columbia and Puerto Rico.

Before I respond to your questions, for the record, let me state certain facts that are relative to my qualifications to speak for the nation's gasoline dealers. I have represented the gasoline dealers of Georgia, one of SSDA's largest affiliates, for over 23 years. I have served as their chief spokesman during the past 18 years as Executive Director. During the past eight years, I have chaired the Government Affairs Committee of SSDA. I became Acting Executive Director and chief spokesman for the Service Station Dealers of America in December 1979 and I am serving in that position today.

Though I have spent almost half my lifetime in dedicated involvement to solve the problems besetting the small business gasoline retail dealers, it was only recently that I fully recognized just how serious is the plight of these dealers as they struggle to serve the motorists of America.

This new insight was developed during the past nine months during an indepth study and fact-finding drive that culminated in the publication of a copyrighted report entitled, "THE CASE FOR LEGISLATIVE RELIEF FROM THE IMPENDING DESTRUCTION OF SMALL BUSINESS AND COMPETITION IN THE GASOLINE INDUSTRY." I am a co-author of that report with Dr. Fred C. Allvine, Professor of Marketing in

the College of Industrial Management at Georgia Institute of Technology; and Otis D. Phillips, Energy Consultant, who served as Regional Director of Fuels Regulations for DOE in Atlanta and as Deputy Director of the Presidential Task Force for Reform of FEA Regulations during 1976 in Washington.

Chapter V of that report deserves the attention of your Committee. Entitled "ACTIONS AND INACTIONS OF THE DEPARTMENT OF ENERGY CONTRIBUTING TO THE DESTRUCTION OF COMPETITION IN THE GASOLINE INDUSTRY," we deal with the issues of concern to this Committee. Because the report is copyrighted we ask that the record show that copies have been furnished to the members of the Committee and that no portion of the copyrighted report has been authorized to be inserted in the proceedings of this hearing.

Mr. Chairman, I will now respond to each of the four questions you prepared.

Q. How are allocations established for new dealers and how does the magnitude of these allocations compare to that for existing dealers?

The regulations require that a new retailer of gasoline apply to the Economic Regulatory Administration (ERA) for an assignment of a supplier-purchaser relationship. The new dealer specifies in his application the volume of gasoline he desires to have allocated to the new outlet.

The regulations imposed have failed to comply with the Congressional Mandate found in Section 4(a)(b)(1) of the Emergency Petroleum Allocation Act of 1973 (EPAA)...to the maximum extent practicable, shall provide for-...(D) Preservation of an economically

sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;

...(F) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users.

The allocation rules favor refiner and reseller salary employee-operated outlets...with resulting injury to dealers as follows:

(1) Allocations have been granted refiner and reseller salary employee-operated outlets in substantial excess of the average allocations of retail dealers in the same general marketing area;

(2) The excessive allocations (in most instances three to four times that of existing dealers in the same marketing area) granted to such outlets have reduced available product for distribution to retail dealers with whom these refiners and resellers have contractual obligation to supply;

(3) Newcomers, primarily refiner and reseller employee-operated outlets, have been granted these larger allocations based on current factors and existing retail dealers have been denied upward adjustments based upon the same market factors;

(4) Upward jobber certification for new customers, including principally their own employee-operated outlets, with no requirement for downward certification for closed outlets has enabled jobbers to gain substantial volumes to the detriment of the dealers served direct by their primary supplier;

(5) Updating of the base period from 1972 to 1977-1978 effectively enhanced the market share for refiner and reseller's salaried employee-operated outlets to the detriment of retail dealers;

(6) Failure to provide simple and fast relief in individual cases has caused the demise of some dealers who otherwise could have survived and instead DOE has provided the detailed and comprehensive guidelines easily complied with by oil company experts effectively giving the advantage to refiners and reseller-retailers.

Until recently DOE (ERA) has been unresponsive to the needs of the small business community, particularly the need to preserve competition in the retailing of gasoline. DOE has allowed refiners and resellers to unconscionably discriminate in allocations not lifted by dealers and from closed outlets by permitting such product to be funnelled into company outlets which are able to sell such product to the detriment of nearby dealers because they sell at lower retail prices than will cover the DTW price and the actual cost of operating the retail outlet.

The exception to the above is the large number of "independent" dealer applicants for assignment where a supplier agreed to willingly provide product.

In many cases, our affiliates across the country have found a large number of these so-called independent applicants to be

ex-employees of the willing supplier or recent retirees of that supplier who benefit greatly from large assignments. As one member of the ERA remarked upon reviewing a stack of applications from ex-employees, all with the same willing supplier, "An assignment of 200,000 gallons a month beats hell out of a gold watch as a retirement present."

DOE, after months and months of hearing dealers complain, finally issued a new set of guidelines for their regional office personnel (F.R. Vol. 45, No. 50/March 12, 1980). The guidelines are not mandatory and thus no noticeable change has been seen to date. The assumption in favor of assignments to new entrants, whether an independent dealer or just another "company store," continues to diminish the volume of product received by others from the same supplier.

Q. What happens to the allocations of stations that have closed?

Based upon reports from around the country, we can assure the Committee that the allocations of closed stations have not found the way to dealer outlets. To the contrary, there are reports that the oil company employee-operated outlets (and reseller-retailers) seemingly don't have product supply shortages.

In many cases the refiners and reseller-retailer outlets have extended their hours of operation and have increased their sales volume by offering lower prices (not based on cost savings or efficiency) than can be met by competing dealers. The jobbers have sold large quantities of their accumulated volume to other than their regular customers. Their extra gasoline accumulated

came from the closed stations and from the increased volume of product obtained from upward certification of new outlets. It is not unusual for such sales to be made at higher prices than that brand of product is available to regular customers with delivery up to 100 miles out of the jobber's normal pattern of distribution. At times, branded dealers in need of more gasoline have obtained their own brand product from such sources.

Q. Why are dealers receiving less than their full base period allocation, if supplies of gasoline are generally plentiful?

Some suppliers simply choose not to furnish additional supplies to dealers. This could be because these suppliers stand to gain by a continuation of low allocation fractions since they are moving seemingly unlimited quantities through their employee-operated outlets. If retaining low allocation fractions is a decision to see what the world situation may do to our immediate future supply then I would applaud their foresight for looking after the national interest. The editorial by a Georgia dealer (see attached) provides some insight into conditions during 1979. Mr. Smith asked the question, "Why, if overall distribution of product in Georgia was down only 2.3% for 1979 over 1978, did he and other dealers only receive 80% of 1978? Who did get the product?" The employee-operated new outlets got it. The new food store accounts got it. With fewer dealers in the marketplace simple logic says the remaining dealers should have received a share of the lost volume caused by the closing of stations. But, you just cannot find many historic dealers who have gained in

their sales volumes. That is because of the concerted and planned objective of suppliers to increase their sales through their own employee-operated outlets, to sell to food stores or to gas-and-go outlets thereby reducing supply availability and crippling the full-service dealers and eliminating more of them from the marketplace.

According to the April 25, 1980 issue of the Lundberg Letter, the total U. S. gasoline sales during 1979 was 95.8% of the annual sales during 1978. Here again, I raise the question about why dealers were on such low allocation fractions! It obviously was because of a redirection of product to new entrants into the marketplace, primarily the supplier employee-operated type, and the move to place gasoline in all of the food stores of America!

Did the switch in direction happen because of consumer demand as claimed by the oil companies? Supply and demand did not command such change. In this instance the consumer has been inconvenienced by the elimination of his local full-service dealer. Neither population nor business centers have shifted significantly so as to cause product demand to require relocation of supply availability. Some of the oil companies simply decided that the consumer will not be offered full-service with the bulk of their retail product sales. With the fast pace of rising prices, a portion of the hike has been hidden in the lower pricing at company outlets and the loss leader use of gasoline by many food stores.

Q. <u>What problems are the current regulations creating for dealers, jobbers, refiners and the public?</u>

On December 12, 1979 the content of the attached letter to the Deputy Secretary of the Department of Energy was used to outline the more serious problems dealers have with current regulations. It so happened that DOE staffers had an identical priority listing with the exception that Item 3 on rent was not included. To illustrate their position, Dr. Sawhill asked one of his assistants to read from the department's record. We were assured these items held top priority for action by DOE.

One February 14, 1980, I met with the Administrator of the Economic Regulatory Administration, Hazel Rollins. We inquired about action on the content of the December 12, 1979 letter. Ms. Rollins gave us assurance that dealers would see tangible evidence that relief was on its way within 15 days.

That assurance by Ms. Rollins was overly optimistic but new final rules on the Refiner/Reseller Retail price rule were issued on May 2 and hearings were held on June 4 and 5 on proposals to correct the problems created by Alaskan North Slope Crude Entitlements. These actions indicate to us that E.R.A. is finally addressing our problems.

We were told action is imminent on a rule to deal with the new entrants to the retail marketplace and the DOE practice of granting such large allocations. We watch from day to day for a glimmer of evidence it will come soon. Our affiliates and their member dealers continue to scream for relief.

In an attempt to deal with the excessive allocations being granted new entrants into retailing, as was pointed out who are primarily supplier employee-operated outlets, ERA's Administrator issued the new guidelines we mentioned earlier for their regional offices on the subject. The guidelines have reportedly had no affect in some regional offices and huge allocations continue to be granted. As gasoline supplies have increased the number of reopened outlets have increased. All of these reopened outlets no doubt expect to obtain huge allocations which will further cripple existing dealers as supply falls in the future. We appreciated the intent and the effort of ERA but must say that credible relief is yet to come.

As to the excessive increases in rents and our plea that dealers deserve relief, apparently, DOE will not attempt to regulate rents because of the court decision on the subject. Therefore, it is essential that the Congress provide new directions to DOE to protect government controlled dealer markup on gasoline from being taken by landlord-suppliers who are unreasonably increasing rents. The content of our letter to Senator Jackson on April 17, 1980 will be of interest. It is attached for your convenience. To keep landlord-suppliers from raising the price of gasoline above prohibited levels by using the changed normal business practice from former practice of charging a fixed rent per gallon to the imposition of an "economic rent" charged on a flat basis, it would be fair for Congress to regulate current rents by limiting the actual rent charged today to not more than the same GNP deflator factor used to limit dealer margins. For

example, if rent were 2 cents-a-gallon in 1973-1974, then today's rent could be approximately 3 cents-a-gallon (the GNP deflator factor is a little over 50%). In so doing, the dealer's landlord would be permitted to keep pace with the government action to hold dealer markup to only cover inflation since 1973-1974. Equity demands attention to this question and I urge this Committee to take immediate action on it.

Mr. Chairman, I hope you and your Committee will give of your time and effort to convince DOE to bring about the necessary changes in regulations immediately so that the service station dealers of America will at least have a better and fairer opportunity to survive. These dealers are more efficient in the marketing of gasoline and services to consumers and they can best serve consumers if our government will only give them a fair chance under rules and regulations imposed upon the marketing of gasoline...and if our government will provide reasonable rules of fairness to prevent the unfair marketing practices that are destroying not only the dealers but competition in the gasoline industry.

Our organization does recognize that the present leadership of DOE, especially the people in the Economic Regulatory Administration, are finally paying attention to, and taking action on, some of the serious problems we have faced.

The vacuum created by the resignation of DOE leadership seems to be rapidly fading and some positive leadership being given.

The policy that the Department was following for a long period of time seemed to be one of decontrol by regulation, and that policy returned to haunt us during the 1979 shortage period.

We understand that ERA is working on a proposal to address some of the abuses in the present allocation assignment regulations. Because ERA is working diligently, and has produced on other current issues, we can't help but believe that relief will be forthcoming shortly. Hopefully, that relief will provide the answers we have long sought. We would respectfully request, therefore, that the record of this Committee be held open for at least ten (10) days so that we will be able to present to you our observation of any proposals submitted to deal with allocation issues. Thank you very much.

WE ARE LOSING. . .
WHO IS GAINING. . . SALES VOLUME?

These are trying times. Government controls limit how much gross profit markup we can place on each gallon of gasoline; provides for allocation of available gasoline to favor new locations and old closed outlets which have been reopened while gradually reducing the number of gallons you and I receive as historic dealers. It is no wonder that 100,000 of the nations dealers are no longer in business since the shortages started. More of us are going to be forced out too if something is not done soon.

Looking at 1979 gasoline sales in Georgia, according to State Revenue Department figures based on excise tax paid, see chart below, you and I should not be as short in the amount of gasoline we have to sell as we have experienced. I did not receive 97.7% of my 1978 sales volume. Did you? Yet the total number of gallons sold in Georgia shows only the 2.3% reduction in 1978 volume of sales.

IF DEALERS DID NOT GET THE GASOLINE. . . who did? That is not too hard to figure out. The federal allocation grants have shifted the volume from dealers to supplier employee-operated and commission operated or convenience store outlets to the detriment of dealers. Each time another large allocation is granted our share of product comes down still further.

Promises, promises, promises. That is what the Carter Administration keeps doing to assure GAPR and the national dealer association (SSDA) that relief is on the way. It may well turn out to be too little too late unless you and I tell how we feel about conditions.

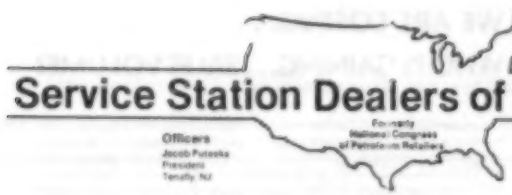
I for one am ready to see some action. . . action by the Department of Energy to correct the allocation rules and action by the United States Congress to enact a law to stop the destruction of small business and competition in the retail gasoline industry. HR 6722 explained in this issue of The Spokesman deserves immediate enactment by the Congress. My Congressman has co-signed HR 6722 and pledged to work for its prompt passage. Let me challenge each of you to speak out to your elected representative about our needs and the needs of our customers, the voters whom we see at least once every ten days.

news & views

TOM SMITH
SHELL DEALER — GRIFFIN
PRESIDENT — GAPR

GASOLINE SALES IN GEORGIA
(In Number of Gallons Sold)

MONTH	1978	1979	Per Cent Sold 1979 Compared to 1978
Jan.	258,205,501	264,166,638	102.0%
Feb.	237,315,954	253,849,781	107.0%
Mar.	232,244,363	230,814,043	99.0%
Apr.	275,145,341	267,814,454	97.0%
May	256,189,472	255,998,333	99.9%
June	267,979,593	263,520,239	98.3%
July	270,584,660	253,662,764	93.7%
Aug.	266,315,516	247,281,965	92.8%
Sept.	273,515,878	262,383,941	95.9%
Oct.	253,696,513	236,904,473	93.4%
Nov.	259,443,084	252,197,084	97.2%
Dec.	252,602,317	242,368,605	95.9%
TOTAL	3,103,258,192	3,031,050,300	97.7%



Service Station Dealers of America, Inc.

Formerly
National Congress
of Petroleum Retailers

Officers
Jacob Puteska
President
Tenafly, NJ

Joseph J. Golsh
First Vice President
Fraser, MI

John Dickson
Second Vice President
Palm Desert, CA

William J. Brooks
Third Vice President
Washington, D.C.

William T. Damian
Treasurer
Villanova, PA

Charles R. Mathes
Director
West Hartford, CT

Louis A. Haskell
Director
Arlington, VA

December 12, 1979

Dr. John Sawhill, Deputy Secretary
Department of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D. C. 20585

Thank you for this opportunity to personally discuss with you the following issues which urgently need positive action by DOE's Economic Regulatory Administration:

1. Immediate adoption of a Refiner-Reseller Retailers Interim Rule to provide for equal pricing with dealers - time is of the essence;

2. Immediate adoption of a revision in the crude oil entitlements program to also include spot market purchases to balance to the extent possible the large differentials in dealer wholesale prices, or to accomplish in some other way - time is of the essence;

3. Immediate adoption of a rental freeze retroactive to March 1974 and adjusted by the same percent as used by ERA to adjust average dealer markup - time is of the essence;

4. Immediate adoption of a 50,000 gallon Rule or the average of dealers located in the same market area, whichever is the lesser - time is of the essence;

5. Immediate change in allocation rules ... such as but not limited to providing a reasonable and simpler procedure for eligible deserving dealers to obtain relief in their allocations; and

6. Immediate adoption of rules to protect dealers supplied by companies which have been ordered by ERA to furnish large quantities for Gasohol - To assure the retailers of availability of the Gasohol as a replacement for lost gasoline.

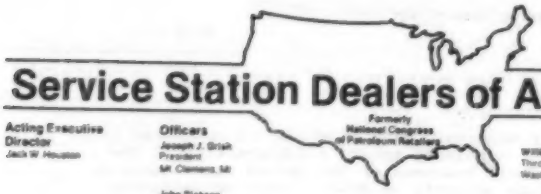
While there are other concerns, many of which are mentioned in our September 11, 1979 testimony before a Subcommittee of the Select Committee on Small Business of The United States Senate, these six are listed in priority of need. (copy of testimony attached)

The future survival of independent dealers rests with ERA. We plea earnestly for prompt action on these items.

Sincerely,

Jack W. Houston
Acting Executive Director

JWH/vs



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Washington, D.C.

William T. Damian
Treasurer
Villanova, PA

Charles R. Mattox
Director
West Hartford, CT

Lewis A. Haskell
Director
Arlington, VA

April 17, 1980

Honorable Henry M. Jackson
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Senator Jackson:

My attention was recently called to the Secretary of Energy's response to your letter to him concerning service station rents.

Increasing frustrations of gasoline dealers caused by changes in the marketing of gasoline have prevented the assembling of further data on excessive rental increases as was requested by the Department of Energy. Many dealers have lost faith in their government and in the value of furnishing further documentation about abuses they are enduring.

Mr. Duncan was not correct to advise that the only information DOE has received was the small sampling from two dealer groups. Every meeting with DOE officials by this association's leadership and some meetings only for the purpose of presenting data about increases in station rents that exceed the inflation adjusted margin (applicable to rent) has provided DOE staffers with factual information. Individual dealers and state associations have likewise met with DOE and most have provided information about the abusive rental increases to you, members of the Congress, who forwarded such complaints to DOE.

DOE apparently accepted our factual data as credible just prior to 1979 since for a period of six months in 1979 the increases in rents were allowed to be passed through to consumers. The data has consistently shown that there are a significant number of dealers who are paying increases in rents of 100% to 300% above their 1974 rental rates. Since the dealers' markup of 15.4¢ (now 16.1¢) represented less than 50% increase in their average markup in 1974, it is apparent the increases of 100% to 300% in rent is in excess of this presently authorized adjustment and it is not covered in the allowable markup.

DOE's posture and authority assuredly provides the means to verify the actions of the major oil companies' change in normal business practices from a cents-per-gallon rental structure in 1974 to today's publicized "economic" flat rental rates. DOE is not ignorant of changes in and increases of rents or the fact that reduced sales volumes in the number of gallons sold, whether caused by allocation fractions or the unfair below cost (subsidization) selling of gasoline through company stores, has significantly increased the rental cost per gallon far beyond the approximate 50% increase that is covered under the DOE authorized markup for dealers. Also, testimony before various House and Senate Committees has provided evidence about the economic rent impact on dealers as has specific and direct recommendations that are a matter of record in the minutes of DOE's own Gasoline Marketing Advisory Committee. See also the Allvine/Houston/Phillips Report, page 53, for findings of the existence of economic rents and its detrimental effect causing the economic eviction of dealers.

Since dealers are locked into a DOE markup based on the 1974 average markup adjusted by changes in the GNP deflator factor and since rent was a part of that original markup base, present rentals should not be permitted (and should therefore be rolled back) to the actual rent charged in 1974 plus the GNP deflator adjustment. So long as product and price controls are in effect and particularly until DOE allows dealers an adjustment in markup to compensate for short supply, DOE should not allow a change in the normal business practice that results in an increase in cents-per-gallon cost for rent. If the present practice of economic rents continues dealers can expect to have their landlord-suppliers reach still deeper into their hip pockets to rob them of the already inadequate markup which the federal bureaucrats have fixed for dealers and while these bureaucrats hold dealers still while they are being robbed.

Apparently, because of the court decision upon which DOE's authority to control rent and/or rental practice was knocked down, special legislation appears to be our only chance for relief.

You have long recognized that these small businessmen and businesswomen and their associations do not have the ability to cope with or the funds with which to hire the battalion of legal counselors who can successfully cope with the federal bureaucracy of DOE or the might of the major oil companies.

Would it be unfair of us to ask that you and other leaders of the Congress cause to be ordered the simple fairness we suggest by limiting rent for gasoline dealers to not more than the average rent charged and paid in 1974 plus the GNP deflator factor adjustment used on dealer markup adjustments to cover inflation for the duration of controls?

The undersigned does not believe such a request would be unfair. As spokesman for the nation's service station dealers I therefore ask, on behalf of the nation's remaining (approximate) 55,000 leasee dealers, that you take the initiative to bring about passage of such a Congressional mandate.

Thank you for your consideration of the needs of gasoline service station dealers and our customers, the motorists of America, whose best interest will be served if the reasonable survival of thousands of small businesses is assured to protect and preserve competition in gasoline marketing vs. less than twenty huge corporations who already control and limit competition in all segments of the oil industry except retailing. The dealers are more efficient in marketing gasoline to the ultimate consumer as has been clearly stated by top corporate officials of some of the larger major oil companies and others who have studied our segment of the oil industry.

We await a response or your action on this plea for help from the Congress.

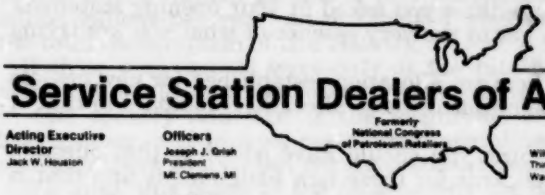
Very truly yours,

Jack W. Houston
Acting Executive Director

JWH:drb

cc: Secretary Duncan

best copy available



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Charles R. Mathias
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West Hartford, CT

Lewis A. Haskell
Director
Arlington, VA

July 7, 1980

The Honorable Dale Bumpers, U.S.S.
Subcommittee on Energy Regulations
Senate Committee on Energy and Natural Resources
Dirksen Senate Office Building, Suite 3202
Washington, D.C. 20510

Dear Senator Bumpers:

We appreciate your providing the Service Station Dealers of America ample time to respond, per our request, to the proposed rules on allocation as discussed at the hearings of your Subcommittee on June 9, 1980.

As you recall, Mrs. Hazel Rollins, Administrator of the Economic Regulatory Administration, Department of Energy, in testimony on June 9, announced that she had just the preceding Friday evening signed a proposed new rule on allocations. We asked for time to study that proposal.

We are still studying it in view of ERA/DOE hearings scheduled July 28 and 29, 1980, on Allocations Revision. It appears that the proposed changes are interwoven and extremely complicated, thus our inability at this time to offer concrete suggestions or alternatives to the proposed allocation revision. We are encouraged in that DOE acknowledges the damage being done by present regulations to the nation's small business gasoline dealers. We are, therefore, hopeful relief is forthcoming.

However, your keeping the record of the Subcommittee open for us to respond is most appreciated, and we believe that with ERA/DOE filing a proposal and thus attempting to clear up the rule(s) and the upcoming hearings themselves has fulfilled our request. We will testify at the ERA/DOE hearings on the proposed revision and our position at that time should assist greatly in clarifying the issues involved. An advance copy of our testimony will be delivered to your office at the earliest possible date.

Respectfully,

Jack W. Houston
Acting Executive Director

Mr. SHIPLEY. Mr. Chairman, in the interest of time, I will confine my remarks to the questions you asked in your opening statement because I think they get to the very essence of what you are trying to arrive at here today.

Question No. 1 is, how are allocations established for new dealers and how does the magnitude of these allocations compare to that of existing dealers?

The only thing I think you should have added to that question was who are the applicants for these new assignments and that is of critical importance because we have found nationwide that most of the applications for new assignments are being received directly from the major supplier who is submitting an application to supply himself at a new entry or new location and this has been particularly apparent in those areas of the country where some of the companies are moving aggressively into direct marketing.

Senator BUMPERS. You're talking about the refineries themselves?

Mr. SHIPLEY. That's absolutely correct.

Senator BUMPERS. Refinery-owned dealers are the ones applying for either new entries——

Mr. SHIPLEY. In most cases, they are not refinery supplying dealers but refinery operated stations that operate with salaried personnel. In the Midwest, as an example, literally dozens of requests are being received from secondary round operations from Marathon Oil Co., either Checker or Speedway or Owens or this type or other companies where they are purported to be operated by dealers, they are in many cases ex-employees, salesmen, sales managers, district training officers who are being—who are taking over supposedly new stations.

More frequently, they are stations closed for some length of time, reopened during periods of shortage with huge assignments granted as retirement presents, a gold watch as it was described by one DOE official.

Senator Levin requested to Dr. Sawhill a breakdown on new assignments given in region V because of the many complaints he received from dealers being faced with new competition during periods of shortage. We analyzed that report, just taking out 1979 because that was the year in which dealers were faced with extreme shortages.

We found during 1975, region V alone, Chicago, granted 1,700 applications for new entry.

Senator BUMPERS. 1975 or 1979?

Mr. SHIPLEY. In excess of 1,700 new entry applications were acted upon and granted as compared to only 56 applications for upward certification from dealers.

Senator BUMPERS. Was this in 1975 or 1979?

Mr. SHIPLEY. 1979.

Senator BUMPERS. You said 1979, restate it.

Mr. SHIPLEY. In 1979, during the year when the product was in short supply in excess of 1,700 new entry assignments were granted by that region and only 56 upward certifications were granted to existing dealers and this shows you who is getting the supply.

If those assignments, and we have reasons to believe they were, were in the magnitude of 150,000 gallons per month, this would

equate to 250 million gallons of new assignments per month or 3 billion gallons per year out of region V representing 3 percent of the total consumption of this country.

If those assignments were only at the rate of 100,000 gallons a month, it would represent over 2 percent of the total consumption in this country and that is the magnitude of new entries, new businessmen, and in most cases direct operations of major oil companies, jobbers supply, but not independent dealers.

We think this is one of the reasons why the disparities in allocations took place and why some regions had more gasoline than they could sell while other regions of the country were doing without.

Senator BUMPERS. How many outlets are there in region V, 1,700 new applications granted——

Mr. SHIPLEY. You are talking about the State of Indiana, Illinois, Michigan, Wisconsin, you are talking about a fairly large area. I wouldn't even hazard a guess on the number of outlets and I'm not sure the industry could supply that but there is a significant number, to increase into that region of the country that percentage of available product, you are certainly destroying any semblance of equity that was built in, if there was any equity built into the original allocation base period.

Both Senator Metzenbaum and you, Mr. Chairman, I think in your questioning of the witnesses earlier recognized, maybe inadvertently so, the fact that the retail market is the only competitive market in this industry. I sat and waited to see if there was going to be any question about the competitive price at the wholesale level.

Your concern about dealers giving up part of their 16.8 does not take effect until the 15th of this month, is justified and we will show, if you would like to look at the market in Michigan, always one of the most viable and one of the most violent, that dealers are not receiving anywhere near 16 percent of margin.

But faced with the fact of ample supply in the market, what has happened at the wholesale level? Of the three men representing industry here this morning, the spread in the wholesale price is unbelievable. In our market in Michigan, and I will have to give you sales figures that were last month, the ceiling price at an Amoco station was 20.4 higher than the selling price at a Sohio outlet.

A Shell dealer supplied by Mr. Bittle's company, his ceiling price was 17.8 higher than the street price at the Borum operations, which is a division of Sohio. Gulf, 18.8; Marathon, 17.2; Mobil, 15.1.

Senator BUMPERS. Are the majors making any concessions, for example, in Ohio or anyplace in Ohio——

Mr. SHIPLEY. Absolutely no. The competitive part of this business—stable at this time and was vacated by the noncompetitive portion of this business just a few moments ago. Our 16.1 is a very small percentage of the $1.40 to $1.50 price being charged to the consumer today and if we give it all up, their benefits would be minimal compared to their total cost of product.

Senator BUMPERS. When we have total decontrol of oil prices in this country, that situation, while maybe not totally eliminated simply because OPEC nations have various prices among them-

selves, won't that—won't most of that be eliminated then, those terrible discrepancies in pricing?

Mr. SHIPLEY. I would hope you, Mr. Chairman, and other members of this committee and of this first full body would seek some assurances that that would take place. But if you will check in the hearings before the Senate Subcommittee on Antitrust and Monopoly in 1963 preceding the Arab Embargo and Emergency Petroleum Allocation Act, I think many of the concerns of Mr. Blum and the jobbers in our organization certainly were expressed through the then Senator Phil Hart about what was going on in the marketplace preceding the Arab embargo, when cutoffs were taking place all over the country, when numerous companies were pulling out of various sections of this United States and pulling back closer to home base to enhance their profitability, although they had some premonition of what the actions of the Arab nations might be that following November.

I am not sure that decontrol will bring about the corrections that are great endorsers of immediate decontrol, I am not sure their thoughts would bring about that type of competitive situation.

Without the assurance that we can buy at competitive prices the availability of volumes of product means nothing. It doesn't make any difference to Mr. Blum's unbranded marketers or to the people we represent as branded marketers or to a jobber that they can buy gasoline if that gasoline is priced where they cannot compete on the street.

This is a situation many of us are confronted with today. To have a supplier say you are now on 112 percent allocation does not mean a thing if your competition, as we have described here earlier, is selling to the public at 20 cents below your ceiling price, 5 cents below your costs. Those factors are only beneficial in periods of short supply.

Senator BUMPERS. Does that situation exist anywhere outside an area where Sohio is operating?

Mr. SHIPLEY. It's—in California where Chevron's price is considerably——

Senator BUMPERS. More than 16 cents below the ceiling price?

Mr. SHIPLEY. Yes, sir.

Mr. BLUM. Senator, if I may, it exists all over the country. We're talking about a situation in Georgia where the spreads are 17 and 18 cents, a situation in California where Chevron's prices are, say 8 to 10 cents below and it very much depends on who the independent supplier you are doing the comparison with is.

That is a mess in the entitlement system that I don't think can be sorted out no matter how long DOE plays with it. The Alaskan subsidy is part of it and there's one other thing and that's the foreign tax credit. As the Treasury has not amended its regulations, the amount of tax incentive or tax saving producers abroad are bringing home is quite large and it is giving them a strong competitive bias. We must straighten out this wholesale price difference or no one will survive.

Senator BUMPERS. Mr. Amori, do you want to comment on this?

Mr. AMORI. Yes. To some degree, my scope of operation is a little narrower than the gentlemen on each side of me, being from the Detroit market. To some degree, you may find down the road it is

straightening out if you limit the independent competitive factor in the marketplace and someday back they might say, "We told you it will be equalized," but equalized at what level, at the risk and sacrifice of whom?

I think if you sacrifice an independent marketer and move him out of the market, you do end up affecting the consumer's ability to get services and competitive advantages. When you look at the shortages that occurred last year in the market I represent and I gave testimony in Detroit to Mr. Wayne's committee, it was obvious that my stations and dealers I supplied were out of product as much as 8, 10, 12 days while those who supplied product had lines at the curb, long lines that everyone was critical of, occurred at the direct major operated facilities, just down the street from where my places were closed.

They were there and we have photo documentation that in some of those instances, when you go to those facilities and see the line at the curb, at that time you had to post your maximum price allowables on the pump and the maximum price allowables on the pumps in some instances exceeded those posted by as much as 2 or 3 cents per gallon.

The concern I've got is that if you want consumers to be serviced properly and if you want competitive pricing to be part of the free enterprise system, it seems to me you have got to consider the viability of the independent marketer, both the dealer and jobber and the independent marketer who buys it from the refiner, that if you sacrifice that identity in the marketplace at the risk of saying, well, now we have parity and equality and these things functioning in the marketplace, then we've kidded ourselves. We really lost an awful lot for the consumer.

Senator BUMPERS. Mr. Blum, one of the problems this subcommittee and DOE is faced with is the desire to rid ourselves of allocation. How do you do that and protect the independent service station operators?

Mr. BLUM. You can rid yourselves of allocation but only if you rid yourselves of price regulation.

Senator BUMPERS. Do away with both but how do you have the assurance then that Shell and Chevron—

Mr. BLUM. Here is what happens, Senator. Everybody has to figure out how he makes the most money. Our people tend to look at the operation of the retail station and say, How can we put through the gallonage at the lowest possible cost because that's the only way you can survive. Our people know they can market gasoline for a fraction of the cost of a major company and they simply don't have the overhead, they don't have the vice presidents, they don't have the kinds of advertising costs and other costs that go with their kind of marketing.

We know that if we have some kind of sharper marketing, we can net them back more money than they make through their own operation. I think it is that straight cash knowledge that will always give us a place in the market. Our people are able to deliver the product at lower cost and that will compete with the majors and everyone else will want to sell to us because that is the way they make the most money.

There is a second point. Majors are not delighted with the prospect of owning lots of retail operations. It's an expensive, messy business to be in and it is much better operated at the local level with local management. I think that—there will always be——

Senator BUMPERS. Mr. Blum, according to the statistics I have here, in July 1975 there were 59,000 refiner marketers and in July of 1979 there were 80,000 and that's an increase of 21,000 in that 5-year period. On branded independents, there were 32,000 in July of 1975 and 31,000 or a loss of 1,000 during the same period of time and on nonbranded independents they stayed about the same, 60,000. How do you account for that?

Mr. BLUM. First of all, numbers are completely flaky. That is to say DOE itself knows the numbers are not much good and the question is, how many gallons does that represent? Gallonage numbers can be looked at way different—it's worse if you look at gallons, that's what I'm saying.

Senator BUMPERS. It is, indeed. In July, for example—I may have misspoke myself.

Mr. BLUM. I'm sure you can find them for the record but I know the gallonage numbers, refiners gallonage has gone up dramatically and what's going on is roughly this. A refiner is told, look, fellows, you can increase your margin for each station but we will let you operate this way. We are going to tell you that if you open a new station, you can attribute the costs of starting up that new station to your overall cost pool.

In a way, we will let you have the same margin you had in your base period, May 15, 1973, adjusted to whenever on the new gallonages you sell in the new location. What DOE has in effect said through its price regulations is we are not going to let you take a larger profit margin on each gallon sold but what we will tell you to do is open up new stations and sell more gallons and that has been repeatedly challenged by the Office of Competition at DOE and it has been pointed out again and again.

DOE put out a rule that would have prohibited refiners from charging the cost of new stations back to their overall operating costs and that was just thrown away. DOE did not do it because they said there was not enough support for it and I am sure by support they are talking about support——

Senator BUMPERS. I want to get the record straight. I misspoke myself. This number of outlets between July 1975 and July 1979, there was about 1,700 decrease in refiner marketers. There was about almost 30,000 decrease independent branded dealers and a thousand increase in nonbranded independents, which shows that the branded independents are the ones that took the biggest shellacking and had the biggest loss.

The figures I gave you awhile ago were their gallons. It was 59,600 gallons per month and this was an average I guess and refiners market in July of 1975, roughly 60,000 gallons a month in 1975, increased to 80,500 in July of 1979.

Whereas, the amount pumped by branded independents went from 32,000 a month in July of 1975 to 31,000 gallons. You can see that they have actually lost a little and the volume they pump on a monthly basis and the refinery marketers have gone up 25 percent.

Mr. BLUM. The real problem is this, Senator. I think the Congress of the United States and the Government of the United States should not be in the business of deciding the competitive balance and competitive parity as between jobber-operated stations, dealer-operated stations, nonbranded independent stations.

We are going to be right back into the trucking business, regulating the price of wire from Dubuque to Chicago, it's a madness of regulation. Where we need you is periods of shortage, not periods of surplus.

Senator BUMPERS. We are coming in, in my opinion, very shortly into permanent periods of shortage where the supplies are all controlled by the majors. If we do as you suggest, I have the fear that there will not be anything but refiner marketers left.

Mr. BLUM. We think the answer is divestiture at the crude oil level.

Senator BUMPERS. I'm with you. I am for divestiture of the marketing area. I think—if I had my way, I would divest them of their marketing operations tomorrow and then we would have competition. The marketplace really would decide and that's the only way you will ever have it. Most of the time you will have terrible inequity, in any event you will have terrible inequities and you will have a mish-mash of regulations trying to protect the independents, trying to get competition in the marketplace.

Mr. SHIPLEY. We would hope to give you the vehicle to express that support very shortly, Mr. Bumpers.

Mr. BLUM. The thing I'm most struck by is that we now compete in a new way. All of us at this table and our friends at the major oil companies compete by going into DOE and suggesting changes in the regulations that will be helpful to us or harmful to someone else. You can track different regulatory changes and it's like tracking an elephant in soft snow.

Downward certification is proposed and majors have been in to talk to DOE. Someone says we will fix the base fraction at 20,000 gallons and our good friends, the service station dealers, have been in to DOE. The real issue is how will we compete, that we have the biggest tin cup fellows in the house

That's a hell of a way to do business and a waste of our time, a waste of your time, a waste of DOE's time. What we need is a situation that where there is a critical shortfall, someone can reimpose regulations reasonably quickly off a base period that came from market experience.

In the meantime, we wrestle down there incessantly and the machinery keeps throwing up new proposals at a rate and keep fairly vigorous and alert people numb responding. There is an obligation I think on the part of this committee to get that regulatory machinery under some kind of control.

Senator BUMPERS. We are always looking for the lesser of two evils here. In my opinion, divestiture would be the perfect solution but I'm tired of jousting with windmills because that won't happen. In lieu of that, what do we do to try to be fair to the majors, fair to the jobbers, the dealers, the independents and eliminate as many abusive practices?

Mr. BLUM. I think the answer is decontrol whenever you have stocks and supplies well over demand. You have that now and the

only reason DOE is holding back is because of perceived political problems. I think it's a madcap scene when we have the President of the United States saying the price of gasoline has to go up and at the same time is running two separate price control programs that operate differently with different objectives to hold the price down and neither one holds the price down.

If you look at the price of gasoline as opposed to the cost of crude oil from the time of the beginning of controls to now, you look at the entire cost of pricing, you will find that those controls have been less effective in the free market for most other things.

Fuel oil prices against gasoline prices, you will find fuel oil prices track the gasoline prices and in fact declined when gasoline went up at times. I think this is an exercise in folly. The thing to do now is to get rid of that package of controls so that if we have as we well may, a cutoff from Saudi Arabia, there will be market experience from which to reimpose them and say in 3 to 6 months when that crisis is over, we can go back to a free market.

Otherwise, this process of adjustment, you have to be Solomon. Here is Mel Goldstein deciding, let's say we have five fellows in here and he sees a new station going in the block, let's block him and stop him because that will be too much competition. Who is to say which one of those people is right?

Senator BUMPERS. Mr. Amori.

Mr. AMORI. There are many appendages to the regulatory process. Deregulation has many appendages to that. The concern we have, some of us and I speak for myself on this issue, that without some safeguards, the signals I have seen that have preceded this day that I am sitting here have made me come to this position I am now asking you to look at some of these things.

It has been here because of the history that has taken place since 1974. Some of the things that have occurred, some of the overtones and direct statements and threats of pullouts and threats of taking brands away, threats of moving freight rates out and the threats of not really contracts, minimizing gallonages within contracts under regulations, these are things currently happening and as we talk about the price of deregulation, down deep in my heart I am a free enterprise advocate and I want to be able to compete as I used to be able to compete.

But if I have to go to a well and that well says you are now dried up at their discretion to make that determination because the attitude is prevalent that says bigness is free enterprise and not fairness, then I have a serious problem.

When you go to the people talking about free enterprise and you are the attitude of free enterprise in this market condition and they say you do not fit the new scope of the thing, they have made that determination, not the marketplace. If they control the ingredients of that marketplace rather than the end result that retails it, then I will be subject to some things that I have to have some guide and some things in place before I personally would like to see that action fly.

Senator BUMPERS. Gentlemen, we are 10 minutes in violation of the Senate rules. Thank you all very much for being here.

The hearing is adjourned.

[Whereupon, at 1:10 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses of Hazel Rollins to Additional Committee Questions

QUESTION SUBMITTED BY SENATOR HENRY M. JACKSON
FOR HONORABLE HAZEL R. ROLLINS

Question: Does DOE intend to make any further adjustments in the base period for purposes of gasoline allocation, so as to account for change in demand, especially in high growth states?

Answer: The Department of Energy does not intend to change the use of the historical period, November 1977 through October 1978, as the base period for allocation of gasoline. We have, however, recently issued proposed rules under which owners of new and existing stations would be able to apply for assignments and adjustments under the same standards and, in general, receive allocations equal to that given to comparable stations in the same area. The proposed rules would also permit adjustments to base period volumes to meet new growth or demand, provided that a willing supplier were found. In addition, the unusual growth adjustment in the existing regulations would be replaced by a rule which would permit the adjustment to more accurately measure real growth.

We believe that these proposed rules, if adopted, would permit DOE's allocation rules to reflect changes in real demand more closely than the existing regulations.

QUESTION SUBMITTED BY SENATOR DALE BUMPERS
FOR HONORABLE HAZEL R. ROLLINS

Question: Please respond to these allegations that oil companies are using their leverage over supplier approved, new allocations to reward certain of their employees or ex-employees with allocations for new service stations while other less-favored businessmen would not receive supplier approval. Do you have any indication that this is occurring? Have you conducted any investigation or survey to determine if it is occurring?

Answer: The Department is not aware that the alleged conduct has created any special difficulties for independent retailers. It has been our experience that major refiners frequently are unwilling to supply applicants for a new service station allocation, whereas jobbers have been less reluctant to do so. In this regard, the DOE regulations allow the jobbers to "upward certify" any additional volumes supplied to a new service station. However, all applications for new service stations, whether the willing supplier is a refiner or a jobber, would be evaluated according to the same substantive criteria in our regulations.

In addition, it should be noted that DOE regulations do not prohibit the assignment of an unwilling supplier. If the facts of a particular case show conclusively that the assignment of an unwilling supplier to a new outlet is required to promote the equitable distribution of petroleum products at equitable prices among all regions of this country and segments of the industry, then assignment of an unwilling supplier may be necessary to serve the objectives of the Emergency Petroleum Allocation Act of 1973.

QUESTION SUBMITTED BY SENATOR BILL BRADLEY
FOR HONORABLE HAZEL R. ROLLINS

Question: Under the DOE allocation rules, what happens when a new owner takes over from a prior owner who was not very ambitious, kept the station closed for long hours, and hence had a low base period allocation? Short of finding a new supplier, what can a new owner do to increase his allocation?

Answer: Under the existing allocation regulations, the new owner of a retail gasoline station may apply for an upward adjustment as an exception to the regulations in a situation involving serious hardship or gross inequity. In addition, a new owner might also be able to qualify for an unusual growth adjustment to base period allocation entitlements if the average monthly purchases for the station during the period October 1978 through February 1979 exceeded monthly purchases during the base period by 10 percent or more.

It should be noted that we have recently issued for public comment a proposed rule that would permit operators of existing stations to apply for an upward adjustment under the same standards as would be applied to an application for an assignment to a new retail gasoline station. Under this proposed rule, owners of existing stations generally would receive allocation entitlements equal to that of comparable stations in the same market area. Owners of existing stations would also be entitled to apply for an upward adjustment to meet new growth in demand, provided that they could find a willing supplier. Public hearings have been scheduled on these proposed rules in several locations during July and August 1980.

APPENDIX II

Additional Material Submitted for the Record

Service Station Association of Louisiana, Inc.
538 Jefferson Highway
Baton Rouge, Louisiana 70806
504-927-2460

May 20, 1980

Honorable J. Bennett Johnston
Senate Energy and Natural Resources
Subcommittee
United States Senate
421 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Johnston:

Thank you for your letter of May 8, 1980, regarding the rescheduling of the May 5 hearings before the Senate Energy and Natural Resources Subcommittee.

We would like to address further comments to the Subcommittee on the allocations situation in the form of responding to a letter from John C. Sawhill, Deputy Secretary of Energy to Congresswoman Lindy Boggs. We request that Mr. Sawhill's letter and this response be made a part of the Subcommittee's record. This has the Congresswoman's approval.

Mr. Sawhill's letter represents the overwhelming unconcern of the Department of Energy for the drastic affect allocation regulations have had on existing independent retailers. He refers, on the one hand, to "an equitable distribution of refined petroleum product" and, on the other hand, to the "very specific and narrow criteria" used for adjusting existing allocations. The fact is that under the existing regulations, growth adjustments are only granted based on the "ten percent margin rule". Under this rule, volumage of gasoline sold during a five month period — October, November and December 1978, and January and February 1979 — is averaged. Thereafter, "base period" regulations are effective for allocations. If a dealer can show mathematically that the volume for any particular month in his base is below the five month average, that month's base would be adjusted to the average.

At this point in time, there are no provisions in the allocation regulations of the Department of Energy to upward-adjust entire base periods to give an existing outlet a higher volume of gasoline. Not one request from a Louisiana retailer that this office is aware of, whether based on hardship or community growth, has been approved by the Office of

Hearings and Appeals of the regional office of the DOE. Our office has asked Mr. Maurice Held, Director of Hearings and Appeals, how dealers prove that upward-adjustment of the base period is necessary, and the answer was that under the existing regulations, there is no provision for doing so.

Mr. Held explained that he has reviewed no hardship cases that warranted an upward adjustment of a base. This statement was made in light of the fact that over 45% of independent dealers in the marketplace in 1972 no longer exist!

With regard to community growth, Mr. Held explained that the inequity of the allocation regulations is in the fact that it is impossible to prove the need to upward-adjust a base for an existing outlet in a growth area due to the fact that new allocations are being granted to to meet that community's needs.

A case in point would be that of Marshall Roberts, an independent service station operator for over fifteen years in Lafayette, Louisiana. Marshall is frozen at a base allocation averaging thirty-two thousand gallons per month. He has an extreme hardship based on the fact that: (1) Exxon is presently at an 86% allocation; (2) his rent has just increased $200.00 per month; (3) his insurance costs have increased dramatically, along with other costs; and, most importantly, (4) in the current surplus situation, with price competition the only means of selling gasoline, he is lowering his profit margin because his wholesale price of gasoline has not been lowered to reflect current market trends. Mr. Roberts estimates that if he continues to operate his business as he is now, he will be out of business in six months — his hardship case was denied. Further, as you know, Lafayette is a growth area. He can not prove community need because two outlets, a Sears store station and a Texaco refiner-operated self-serve outlet, have entered the market in the last six months, both requesting allocations in the hundreds of thousands of gallons per month. The community therefore needs no more gasoline from Marshall, according to DOE.

Marshall is not the only dealer affected. Many dealers in Lafayette opposed the construction of the new outlets and the granting to them of huge allocations, and most of those opposing the new outlets have been denied increased volumage. All stations would like to be granted more gasoline to sell so that they could meet the community's needs, but the regulations have "tied the hands" of the Office of Hearings and Appeals, who has authority to grant such requests.

We can not overemphasize the fact that allocation regulations have got to be changed. There is a crisis in this country that apparently will not be reacted to until the vast majority of independent retailers, all of whom are small businessmen, have either been driven out of business, or are seriously financially damaged. And until some changes are made, the Department of Energy's rhetoric will continue to drive independent dealers out of what used to be a competitive marketplace.

The Service Station Association of Louisiana, Inc. implores Congress to take immediate action to protect this state's and the entire nation's small independent gasoline retailers. As long as our businesses are frozen in a dynamic market, we will continue to go out of business, until we are eventually a thing of the past.

Thank you for your attention, and please contact me if we can provide any further information.

Sincerely yours,

Daniel H. Usner

Daniel H. Usner
Legislative Director

DHU/TJW

cc: Hon. Lindy Boggs,
U.S. House of Representatives
Hon. John B. Breaux,
U.S. House of Representatives
Jack Houston, Acting Exec. Dir.
Service Station Dealers of America

Department of Energy
Washington, D.C. 20585

May 8, 1980

Honorable Lindy Boggs
House of Representatives
Washington, D.C. 20515

Dear Ms. Boggs:

This is in response to your letter supporting a petition for rulemaking recently submitted to the Department by the Small Business Administration. The petition seeks a moratorium on allocation assignments for new retail gasoline stations. It also asks us to establish a more equitable standard for adjusting the base period gasoline entitlements of existing retail stations.

We recently notified the Small Business Administration that we intend to initiate a rulemaking proceeding concerning new station assignments. We believe that revised standards for granting assignments must not only recognize the legitimate needs of growth areas, but also satisfy our responsibility to foster competition and to ensure an equitable distribution of refined petroleum products. Therefore, our rulemaking proposals will not eliminate new station assignments, but will impose realistic criteria for determining eligibility and volumes to be assigned.

With respect to existing stations, the current regulations contain an automatic growth adjustment which is available to all existing outlets that meet very specific and narrow criteria. We intend to propose revisions to the regulations governing adjustments of base period assignments. We will solicit comments on practical criteria and procedures for handling growth adjustments.

We will welcome your comments on our proposal for new station assignments. If we can be of further assistance, pleas · let us know.

Sincerely,

John C. Sawhill
Deputy Secretary